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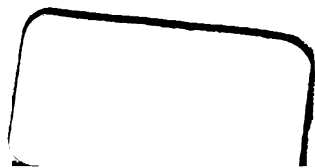
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H. SNOWDEN MARSHALL

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES
SIXTY-FOURTH CONGRESS
FIRST SESSION

355

622

AND A

SPECIAL SUBCOMMITTEE THEREOF

DESIGNATED TO

INVESTIGATE CHARGES AGAINST H. SNOWDEN MARSHALL,
UNITED STATES DISTRICT ATTORNEY FOR THE
SOUTHERN DISTRICT OF NEW YORK

UNDER AUTHORITY OF

H. RES. 90

Serial 39

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CHRONOLOGICAL HISTORY.

- January 10, 1916.—Hearings before full committee.
January 12, 1916.—House resolution 90, by Mr. Buchanan of Illinois.
Resolution directing committee to ascertain whether action of House is necessary concerning alleged official misconduct of H. Snowden Marshall, district attorney for the southern district of New York.
January 17, 1916.—Hearings before full committee.
January 19, 1916.—Hearings before full committee.
January 27, 1916.—Mr. Webb authorized to introduce resolution. (See H. Res. 110.)
January 27, 1916.—House agreed to House resolution 110. (See Cong. Rec., p. 1830.)
January 31, 1916.—Chairman authorized to appoint subcommittee of three.
February 1, 1916.—Messrs. Carlin, Gard, and Nelson appointed as members of subcommittee.
February 2, 4, 9, and 11, 1916.—Washington, D. C., hearing before subcommittee.
February 28 and 29, 1916.—New York, N. Y., hearing before subcommittee.
March 1, 2, 3, and 4, 1916.—New York, N. Y., hearing before subcommittee.
March 8, 1916.—Washington, D. C., hearing before subcommittee.
March 9, 1916.—Subcommittee reported to full committee as to progress of investigation, and submitted letter from District Attorney Marshall attacking investigation.
March 21, 1916.—Subcommittee made report with reference to said letter. Report discussed by committee.
March 24, 1916.—Washington, D. C., hearing before subcommittee.
March 30, 1916.—Committee further considered Marshall correspondence.
March 31, 1916.—Committee adopted resolution directing chairman to prepare report to House relative to said correspondence.
April 3, 1916.—Committee adopted said report.
April 5, 1916.—Mr. Webb submitted report to House (H. Rept. No. 494). House adopted House resolution 193, directing appointment of select committee to consider report and to make report to House relative to same. Speaker appointed as members of select committee Messrs. Moon, Garner, Crisp, Sterling, and Lanroot. (Cong. Rec., pp. 6322-6324.)
April 5 and 7, 1916.—Washington, D. C., hearing before subcommittee.
April 14, 1916.—Select committee submitted report finding Mr. Marshall guilty of contempt and recommending method of procedure in trial for the contempt. By unanimous consent House agreed that report lie on Speaker's table until called up by special committee. (H. Rept. No. 544; House Calendar No. 100; Cong. Rec., pp. 6973-6979.)
April 24 and 29.—Washington, D. C., hearing before subcommittee.
May 1 and 6.—Washington, D. C., hearing before subcommittee.

COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES.

SIXTY-FOURTH CONGRESS.

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WILLIAM L. IGOE, Missouri.

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HUNTER H. MOSS, Jr., West Virginia.

A. L. QUICKEL, *Clerk*.

H. SNOWDEN MARSHALL.

COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, *Monday, January 10, 1916.*

The committee met at 10.30 o'clock a. m., Hon. Edwin Y. Webb (chairman) presiding.

Present also, Representatives Carlin, Thomas, Taggart, Igoe, Williams, Whaley, Caraway, Neely, Steele, Volstead, Nelson, Morgan, and Danforth.

There was present before the committee Hon. Frank Buchanan, Representative in Congress from the State of Illinois, the committee having under consideration the matter of the proposed impeachment of H. Snowden Marshall, United States district attorney for the southern district of New York.

The CHAIRMAN. Gentlemen of the committee, I have called the committee together this morning for the purpose of hearing Congressman Buchanan, who has heretofore filed charges against District Attorney H. Snowden Marshall, looking to his impeachment. I assured Mr. Buchanan as soon as the charges were prepared that the committee would be glad to hear him further in amplification and specification of the charges which he proposes to lodge against District Attorney Marshall. He notified me on Saturday that he would like to be heard this morning, and I have called the committee together for that purpose.

Mr. Buchanan, the committee will be glad to hear you now.

**STATEMENT OF HON. FRANK BUCHANAN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF ILLINOIS.**

Mr. BUCHANAN. Mr. Chairman and gentlemen of the committee, as you of course all understand, I am not a lawyer, and therefore I am expected to make some excuse, I suppose, when it comes to dealing with legal matters.

First, I would like to impress upon every member of this committee the fact that my reading charges in the House against H. Snowden Marshall, district attorney for the southern district of New York, was not by any means by personal reasons, as has been stated in the press and otherwise. In my activities in regard to public affairs, and for the benefit of the people wherein I have been in a representative capacity, the people's interest is of such importance compared with the individual, that should I substitute my individual interests instead of trying to represent the public's interests, I would not be worthy of a seat in Congress or to represent 400,000 people, which I have in my district.

I have for some time had my attention called to the conduct of the district attorney for the southern district of New York. As you know, I have been recently indicted there, and I stated to some of my friends before this indictment was issued that while there wasn't a bit of evidence or any circumstances to justify indictment or any sort of charges that were then current in the newspapers, that I expected the indictment on account of information that I had had, where indictments had been made without truth to justify it, and men convicted—railroaded to conviction in some cases that are pending in the Supreme Court now.

Since bringing these charges of impeachment against the district attorney for the southern district of New York I have been informed that perhaps they are not sufficiently broad to cover all I thought they would cover. I was of the opinion that the last paragraph would cover everything under the sun—"of other high crimes and misdemeanors." Of course I can not expect this committee to tell me what position they would take in regard to them, but if the committee will not consider it any reflection on them I should like to supplement those charges by a resolution which I have, by reading it in the House.

This is a short brief that I have had prepared, pointing out to the best of my ability, from knowledge that I have been able to gain, what are impeachable offenses. As this committee consists of able lawyers, perhaps it would be an imposition on my part to take up your time by reading any brief that I may prepare, and if the committee would prefer it I will leave these few pages here instead of reading it, but I will read it if you so desire.

The CHAIRMAN. I think the committee would be satisfied just to incorporate it in your remarks. I understand that it deals entirely with the law.

Mr. BUCHANAN. It deals entirely, so far as with my limited resources I have been able to prepare the brief, as to the Constitution in regard to impeachment cases.

The CHAIRMAN. Now, that is not connected with any facts you propose to show in this particular case; it is purely a legal discussion?

Mr. BUCHANAN. I have been unable to find anything to definitely satisfy myself as to what is an impeachable charge. It is not necessary for it to be indictable. Of course, if this committee desires, if they would prefer any of my information—but I am of the opinion that lawyers would not want me to take up their time by reading to them the law.

The CHAIRMAN. I do not think it is necessary at all if it is purely a legal argument; but if it bears upon any of the facts which you propose to prove in the case, of course we would like to have you place it before the committee. If it is purely a legal argument, we can read it later, of course.

Mr. BUCHANAN. Now, in regard to this, I have got quite a good deal of documentary evidence, and I want to be frank with the committee and I want to state this, that in my opinion it is going to be impossible for this committee or any other investigating body to be able to secure information to sustain charges and throw light on the actual conditions in that office unless it is through the power of subpoena. I have found in my very brief investigation—I have been so busy about other matters that I have had little time to make a thorough investigation, but I have made some investigation, and I find men who find that they are witnesses, who are willing to testify if they are subpoenaed, but will not voluntarily testify, for personal reasons, business and otherwise, both business and professional.

To make a further statement in regard to my position in some of the charges that I have already made, I want to say that here is something that the last paragraph in my impeachment charges covers—it isn't specified in the impeachment charges—and that is the Osborne-Tanzer case. It is my suggestion, after careful investigation of conditions—and I am firmly of the opinion—that if the person against whom the charges are directed, or his friends, ascertain the names of witnesses and the character of documentary evidence in existence tending to establish those charges, that an effort will be made to spirit away those witnesses and possibly destroy such documentary evidence. For that reason the persons who have cases and names of such witnesses or the possession of some such documents, and knew of the existence of other documentary evidence, reluctantly refused to submit them at this time. In order to preserve existing evidence I therefore suggest that if the committee will signify its desire to hear such evidence and examine such documents they should issue legal and sufficient process to procure this information, as I stated before.

EXHIBIT No. 1, JANUARY 10, 1916.

BRIEF IN SUPPORT OF THE IMPEACHABILITY OF CHARGES PREFERRED AGAINST H. SNOWDEN MARSHALL, UNITED STATES DISTRICT ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK, BY HON. FRANK BUCHANAN.

The question as to what are and what are not impeachable offenses under the Constitution of the United States is one that has never been finally settled and is one which will probably never be clearly defined. The convention that framed our Constitution did not invent the remedy by impeachment, but adopted a well-known and frequently used method of getting rid of objectionable public officers, modifying it to suit the conditions of a new country.

On February 23, 1905, the Senate sitting in the impeachment trial of Judge Charles Swayne, Manager Henry W. Palmer, of Pennsylvania, filed a brief, in which he said in part:

"In England all the King's subjects were liable to impeachment for any offense against the sovereign or the law, but our Constitution modified the remedy by confining it to the President, Vice President, and all civil officers, and the punishment to removal from office and disqualification to hold office in the future. That it was not intended as a punishment for crime clearly appears when we read that a party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law."

The convention that framed the Constitution did not define words but used them in the sense in which they were understood at that time. The impeachment clause, written into our Constitution, carried with it all that the proceeding meant in England at that time, subject only to the few restrictions imposed upon it by the convention. Whatever crimes and misdemeanors, therefore, were the subjects of impeachment in England prior to the adoption of the Constitution, and as understood by its framers, are subjects of impeachment before the Senate of the United States, subject only to the limitations of the Constitution. Foster on the Constitution says, in part:

"Impeachable offenses are those which were the subject of impeachment by the practice of Parliament before the Declaration of Independence, except in so far as that practice is repugnant to the language of the Constitution and the spirit of American institutions. An examination of the English precedents will show that, although private citizens as well as public officers have been impeached, no article has been presented or sustained which did not charge either misconduct in office or some offense which was injurious to the State at large.

"In this class of cases, which rests so much in the discretion of the Senate, the writer would be rash indeed who were to attempt to prescribe the limits of its jurisdiction in this respect.

"An impeachable offense may consist of treason, bribery, or a breach of official duty by malfeasance, or misfeasance, including conduct such as drunkenness, when habitual or in the performance of official duties, gross indecency and profanity, obscenity, or other language used in the discharge of an official function, which tends to bring the office into disrepute, or an abuse or reckless exercise of a discretionary power, as well as a breach or omission of an official duty imposed by statute or common law; or a public speech when off duty which encourages insurrection. It does not consist in error in judgment made in good faith in the decision of a doubtful question of law, except, perhaps, in the violation of the Constitution itself."

It is clearly evident that the whole theory of the process of impeachment, both in this country and in England prior to the adoption of our Constitution, was, and is, the protection of public office against the abuse and misconduct, through malfeasance, nonfeasance, and in some cases misfeasance, on the part of public officers and officials, and the provision for the just and proper punishment of the violators of such public trust. It is for the purpose of punishing men in public office for acts committed or omitted which are not made criminal either by the common law or by statute, and who, in the absence of such process, could degrade and debauch public office and remain unpunished. It provides a means of removing from public office men whose conduct, were they allowed to continue in office, would imperil the public safety.

"It's foundation," says Mr. Rawle in his treatise on the Constitution, page 210, "is that a subject intrusted with the administration of public affairs may sometimes infringe the rights of the people and be guilty of such crimes as the ordinary magistrates either dare not or can not punish.

"The delegation of important trusts, affecting the higher interests of society, is always from various causes liable to abuse. The fondness frequently felt for the inordinate extension of power, the influence of party and of prejudice, the seductions of foreign states, or the basest appetites for illegitimate emoluments are sometimes productive of what are not inaptly termed political offenses, which it would be difficult to take cognizance of in the ordinary course of judicial proceedings."

Cushing, in his treatise on the Law and Practice of Legislative Assemblies, page 980, paragraph 2539, says:

"The purpose of impeachment, in modern times, is the prosecution and punishment of high crimes and misdemeanors, chiefly of an official or political character, which are either beyond the reach of the law, or which no authority in the State but the supreme legislative power is competent to prosecute, and, by the law of Parliament, all persons, whether peers or commoners, may be impeached for any crimes or offenses whatever."

Again, Mr. Foster, in his Commentaries on the Constitution of the United States, volume 1, page 569, says:

"The object of the grant of the power of impeachment was to free the Commonwealth from the danger caused by the retention of an unworthy public servant."

And, on page 591 of the same volume:

"An impeachable offense may consist of treason, bribery, or a breach of an official duty by malfeasance or misfeasance, including conduct such as * * * or an abuse or reckless exercise of a discretionary power."

And when, in the course of argument during the impeachment trial of Andrew Johnson, President of the United States, the question, "What are impeachable offenses?" was under discussion, Mr. Manager Benjamin F. Butler, of Massachusetts, argued learnedly as follows:

"We define, therefore, an impeachable high crime or misdemeanor to be one in its nature or consequences subversive of some fundamental or essential principle of government, or highly prejudicial to the public interest, and this may consist of a violation of the Constitution, of law, of an official oath, or of duty, by an act committed or omitted, or, without having violated a positive law, by the abuse of discretionary powers from improper motives for any improper purpose."

It is often contended, when the question as to the impeachability of certain offenses under our Constitution is under consideration, that only crimes which are indictable, either under Federal statute or common law, are subject to impeachment. This argument, however, has been refuted time and again, and in support of such refutation the following are cited:

Mr. Manager Wickliffe, during the trial of impeachment of Judge Charles Swaine, February 23, 1905, said:

"The word misdemeanor, used in its parliamentary sense as applied to offenses, means maladministration—misconduct not necessarily indictable—not only in England but in the United States."

And again, in Wharton's State Trials, page 202:

"In the Senate, July 8, 1797, it was resolved that William Blount, Esq., one of the Senators of the United States, having been guilty of a high misdemeanor entirely inconsistent with his public trust and duty as a Senator, be, and he hereby is, expelled from the Senate of the United States."

"He [meaning Senator Blount] was not guilty of an indictable crime." (Story on the Constitution.)

"The offense charged," Judge Story remarks, "was not defined by any statute of the United States. It was an attempt to seduce a United States Indian interpreter from his duty and to alienate the affections and conduct of the Indians from the public officers residing among them."

In the American and English Encyclopedia of Law, Volume XV, page 1066, the following is found:

"In each of the only two cases of impeachment tried by the Senate in which a conviction resulted, the defendant was found guilty of offenses not indictable either at common law or under the Federal statutes, and in almost every case brought offenses were charged in the articles of impeachment which were not indictable under any Federal statute, and in several cases they were such as constituted neither a statutory nor common-law crime. The impeachability of the offenses charged was, in most of the cases, not denied. In one case, however, counsel for the defendant insisted that impeachment would not lie for any but an indictable offense, but after exhaustive arguments on both sides this defense was practically abandoned. The cases, then, seem to establish that impeachment is not a mere mode of procedure for the punishment of indictable crimes; that the phrase 'high crimes and misdemeanors' is to be taken not in its common-law but in its broader parliamentary sense, and is to be interpreted in the light of parliamentary usage; that in this sense it includes not only crimes for which an indictment may be brought, but grave political offenses, corruptions, maladministration, or neglect of duty involving moral turpitude, arbitrary and oppressive conduct, and even gross improprieties, by judges and high officers of state, although such offenses be not of a character to render the offender liable to an indictment either at common law or under any statute. Additional weight is added to this interpretation of the Constitution by the opinions of eminent writers on constitutional and parliamentary law and by the fact that some of the most distinguished members of the convention that framed it have thus interpreted it."

Much argument has been put forth in the past to the effect that only such acts as are enumerated and set forth in the Constitution itself can be the subjects of impeachment, or such acts as are defined by statute of Congress. No better answer can be

made to this contention than the words of Judge Story, who, in the fifth edition of his treatise on the Constitution, section 796, says:

"Is the silence of the statute book to be deemed conclusive in favor of the party (to be impeached) until Congress have made a legislative declaration and enumeration of the offenses which shall be deemed high crimes and misdemeanors? If so, then as has been truly remarked (citing Rawle on the Constitution) the power of impeachment * * * is a complete nullity and the party is wholly dispensable, however enormous may be his corruption or criminality."

Again, the American and English Encyclopedia of Law, Volume XV, page 1066, in treating on this subject, says:

"The Constitution of the United States provides that the President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors. If impeachment in England be regarded merely as a mode of trial for the punishment of common-law or statutory crimes, and if the Constitution has adopted it only as a mode of procedure, leaving the crimes to which it is to be applied to be settled by the general rules of criminal law, then, as it is well settled that in regard to the National Government there are no common-law crimes, it would seem necessarily to follow that impeachment can be instituted only for crimes specifically named in the Constitution or for offenses declared to be crimes by the Federal Statutes. This view has been maintained by very eminent authority. But the cases of impeachment that have been brought under the Constitution would seem to give to the remedy a much wider scope than the above rule would indicate."

In conclusion, it is respectfully submitted that, in view of the argument set forth in this statement, together with the opinions of the eminent authorities cited, the charges preferred against Mr. H. Snowden Marshall, United States district attorney for the southern district of New York, by the Hon. Frank Buchanan, Member of Congress, enumerated below, constitute a violation of a public trust by a public official and the use of a public office highly prejudicial to the public interest and welfare and are, therefore, impeachable under the provisions of the Constitution of the United States.

Mr. BUCHANAN. As to some of the instances to bear out my charges in regard to the refusal to prosecute trusts, etc., I have got a brief statement here in regard to the suit brought in the southern district of New York to dissolve the Tobacco Trust, which you all know about—the American Tobacco Co. and the Metropolitan Tobacco Co. There was an enormous mass of testimony taken in that case and the court finally rendered an opinion that the trust should be dissolved. The case was appealed to the Supreme Court of the United States, and this court, after wading through about 14,000 or more pages of testimony, affirmed the decision of the lower court and sent the case back with instructions that the trust be dissolved, and dissolution was supposedly effected, as per the instructions of the United States Supreme Court. However, it was but a short time before this combination had resorted to those tactics of operation which resulted in the presentation of a complaint by the retail tobacco dealers and jobbers to the Attorney General, setting forth the case complained of and asking relief. The Attorney General referred the complaint to H. Snowden Marshall, United States district attorney for the southern district of New York for investigation and such action as he might find necessary. Mr. Marshall notified these plaintiffs to appear before him with their evidence and testimony, in order that he might proceed in accordance with the directions of the Attorney General. When the parties appeared he referred them to two of his assistants, Mr. Stephenson and Mr. Thompson, and these gentlemen proceeded on a course of procrastination and unnecessary delays to drag the proceedings along. Renewed complaints were made to Mr. Marshall. Demands were made to him to act, knowing as he did that all of this time the trust continued to rob 6,000,000 people of New York and

environs, just as they had in the past; they continued to put out of business the independent retail dealers and destroy the business of the independent jobbers in tobacco as they had before, until finally, in February, 1915, utterly dissatisfied with the delays and procrastinations of Mr. Marshall, and despairing of forcing him to take action, the Wholesale Tobacco Jobbers' Association of New York filed a new complaint, a new set of charges with the Attorney General, reiterating all the allegations contained in the complaint of August, 1913. The Attorney General made the same disposition of this complaint as of the other. He referred it to Mr. Marshall with instructions to take evidence, and if evidence existed to support the charges, to prosecute the conspirators.

Mr. NELSON. Let me interrupt you there. You say the Attorney General. Who was Acting Attorney General at that time?

Mr. BUCHANAN. Mr. McReynolds I believe.

Mr. IGOE. May I ask when Mr. Marshall was appointed?

Mr. BUCHANAN. I do not have the date, but it was about two years ago.

Mr. IGOE. Was he in office in August, 1913?

Mr. BUCHANAN. Yes, sir. Mr. Marshall and the two assistants to whom he delegated the work of dealing with these complaints proceeded with the same tactics of tiring out complainants with long drawn out hearings and frequent adjournments. Nothing has been done to stop the robber trust, and the Tobacco Trust in consequence of this action on the part of Mr. Marshall and his subordinates has robbed the people of the State of New York and its environs of several thousand dollars a day continuously since August, 1913, down to the present time.

So satisfactory has been the conduct of this matter by Mr. Marshall's office from the standpoint of the trust, that the trust has offered Mr. Thompson, the person whom Mr. Marshall placed in charge of this prosecution, a position as one of its principal counsel. Mr. Henry Hunter, counsel for the Retail Tobacco Dealers Association of Greater New York, and the Independent Tobacco Jobbers Association of Greater New York, can testify to these facts.

Mr. VOLSTEAD. Now pardon an interruption, if it will not interfere—have you any statement as to what the charges were that they filed against the Tobacco Trust?

Mr. BUCHANAN. That they were continuing to monopolize the trade.

Mr. VOLSTEAD. But how?

Mr. BUCHANAN. How?

Mr. VOLSTEAD. Yes; in what respect?

Mr. BUCHANAN. I have not got the details. It is a matter that can be obtained by the records of the court.

Mr. VOLSTEAD. Have you any copy of the original complaints?

Mr. BUCHANAN. I have not got any copy here in my office. I have had men before me that claim it is only a matter of record of the court to get these copies.

Mr. STEELE. I suppose you rely upon the record in the Supreme Court, where it was adjudged a trust?

Mr. BUCHANAN. Well the records of the Supreme Court, of course we can get them, but the records in Mr. Marshall's office; and the

office of the Department of Justice will show about these complaints that I have mentioned here.

Mr. DANFORTH. Has action been commenced by these wholesale dealers against the tobacco company?

Mr. BUCHANAN. They have made complaints asking that the district attorney act.

Mr. VOLSTEAD. Do you know whether they claim that they are violating the decision in the trust suit?

Mr. BUCHANAN. Yes, certainly. They would have had no grounds to ask for action otherwise would they?

Mr. VOLSTEAD. Oh, I presume they might. It would depend upon what form the violation took.

Mr. DANFORTH. Has the Attorney General's office here in Washington copies of these complaints?

Mr. BUCHANAN. I suppose that the Attorney General's office keeps copies of all those cases brought before them, don't they?

Mr. DANFORTH. I don't know. We are here seeking for information. We want to get at the facts.

Mr. BUCHANAN. Well, it is pretty hard for me to get facts. That is one reason why this matter is before the committee; that is one of the reasons why the committee ought to get them, and I think a good deal of the information you are not going to get without its power.

Mr. WILLIAMS. Were these complaints referred to the district attorney to investigate and exercise his discretion as to whether he would proceed, or did the Department of Justice direct him to proceed?

Mr. BUCHANAN. The Department of Justice after this complaint was laid before them, as I have just stated, referred it to the district attorney for the southern district of New York with instruction to act, as I understand it.

Mr. NELSON. You say that he referred it to two assistants?

Mr. BUCHANAN. Yes.

Mr. NELSON. Now, why do you hold him accountable for his assistants, and not hold the Attorney General accountable for the action of his subordinates?

Mr. BUCHANAN. Certainly he is responsible for the subordinates in his own office.

Mr. NELSON. Isn't the Attorney General of the United States responsible for the action of his assistants?

Mr. BUCHANAN. That is a question that I do not know. I think at least the district attorney of that district ought to be responsible to the department here.

Mr. NELSON. But if I followed you, Mr. Buchanan—and I am not seeking to throw any difficulties in your way—you charge that complaint was made to the Attorney General, and he referred it to his active man there.

Mr. BUCHANAN. He referred it to the man in that district because that is where the violation was.

Mr. NELSON. Of course, we all understand they are acting under the direction of the Attorney General. Now, has the Attorney General's office come to any conclusion with reference to these charges at all, or are they merely dragging along?

Mr. BUCHANAN. Well, my information—and I believe it can be well substantiated—is that it has dragged along and that there is no dis-

position on the part of the district attorney of the southern district of New York to prosecute these cases.

Mr. VOLSTEAD. Let me ask this: Have you made any inquiry as to whether the district attorney has reported to the Attorney General? I presume that if he made a full and fair statement of the facts as he found them, submitting that statement to the Attorney General, it would be the Attorney General that would be responsible.

Mr. BUCHANAN. I understand that he has.

Mr. VOLSTEAD. You do not know whether he has or not?

Mr. BUCHANAN. I do not know whether he has or not. I know that action has not been taken.

Mr. THOMAS. Do you know where we can procure evidence to show that this has been manipulated up there?

Mr. BUCHANAN. Gentlemen, I will state that with my limited resources and power I am satisfied I can not do it. I am prepared now—in fact, I have some witnesses here, but perhaps you would not want them to come before you this morning. I have some attorneys here in the Tanzer-Osborne case. I have got a lot of documentary evidence, but I feared, after talking with the attorneys, that it does not fully cover it, and I want to be sure that it does cover it. That is why I was thinking about supplementing my impeachment charges, but I do not want to do it if anyone could say that it reflected on the Judiciary Committee.

Mr. THOMAS. Do you know what this American Tobacco Co. did to violate the law?

Mr. BUCHANAN. No, I haven't got the complaints in detail, but they practice the usual trust methods, I guess. They destroy every competitor they can by any means that they can use, just as the Standard Oil Co. and other trusts do.

Mr. THOMAS. Do you know whether proof of that fact has been laid before the district attorney's office in New York?

Mr. BUCHANAN. That is my statement in here.

Mr. NELSON. That was referred to the Attorney General of the United States?

Mr. BUCHANAN. Yes, and referred by him to the district attorney's office for the southern district of New York.

Mr. NELSON. Well, to your knowledge has the district attorney's office in New York made a report to the Attorney General here?

Mr. BUCHANAN. I just stated that I have no information in regard to what he has done about it, any more than he has neglected to act.

Mr. WILLIAMS. Do you know whether or not the district attorney's office in New York investigated these charges?

Mr. BUCHANAN. I just stated that he referred it to two subordinates, and they delayed and procrastinated and nothing came of it.

Mr. WILLIAMS. Did they investigate it to know whether it would justify prosecution?

Mr. BUCHANAN. I do not think they made an honest effort to investigate it.

Mr. NELSON. You charge there in your statement that they actually retained one of the counsel in this case as counsel for the tobacco company?

Mr. BUCHANAN. I have information that they have offered one of the investigators a retainer as their lawyer.

Mr. CARAWAY. Did he accept?

Mr. BUCHANAN. My information is that he has. I am not certain about that.

Mr. NEELY. Mr. Buchanan, can you cite us to the decision of the Supreme Court of the United States in this tobacco case?

Mr. BUCHANAN. No.

Mr. NEELY. It occurs to me that that might throw some light on it.

Mr. BUCHANAN. I thought that was such a prominent case that it would not be necessary.

Mr. NEELY. There have been a large number of these antitrust decisions.

Mr. BUCHANAN. As I understand it, this is the same case as the Standard Oil—the Tobacco Trust and the Standard Oil.

Mr. NEELY. This is the principal tobacco case?

Mr. BUCHANAN. The American Tobacco Co. and the Metropolitan Tobacco Co. I have already stated that suit was brought in 1911 and the decision was rendered in 1913.

Mr. IGOE. Were these persons, do you remember, in the case after the decree of dissolution went into effect?

Mr. BUCHANAN. Yes.

Mr. IGOE. I mean the case which had been dissolved.

Mr. BUCHANAN. Well, I don't remember. The name of them is American Tobacco Co. and Metropolitan Tobacco Co.

Here is another statement that I believe can be proven if proper investigation is made with authority to examine records and subpoena witnesses: When Mr. Marshall took his office he had a conspiracy with members of his firm to monopolize the Federal judicial business of the district, and as a means to that end it was decided that the office of the district attorney for the southern district of New York should be so organized as to enable those conspirators to show to persons or corporations whose liberty or property were in jeopardy in the courts of that district that by retaining this firm they would have an opportunity to get their case brought by lawyers who had been associated with the district attorney up to the time of his appointment on the one side and on the other the person in charge of the cases was a man who had gone from the office of these lawyers directly into the service of the Government as assistant United States attorney in the district; and that in furtherance of this conspiracy every principal position of trust and confidence in that office had been filled by persons who were either in the employ of this firm or who were nearly related to some member of the firm. I have the names of some attorneys here who will testify to the facts of these statements. Among those that I have are Charles E. Whitney Wilson Bryce, Cochran & Manton, and Ernest Baldwin.

The CHAIRMAN. Now, Mr. Buchanan, do you charge that Snowden Marshall was a member of this conspiracy?

Mr. BUCHANAN. Yes.

The CHAIRMAN. That he went into it after he became district attorney?

Mr. BUCHANAN. His firm after he became district attorney seemed to have a monopoly on that sort of business.

Mr. WILLIAMS. Who are the members of his firm?

Mr. BUCHANAN. Well, George Gordon Battle—Battle & Marshall.

Mr. STEELE. Senator O'Gorman is in the firm. It is O'Gorman, Battle & Marshall.

Mr. BUCHANAN. I have heard of it as Battle & Marshall to start with. I didn't know O'Gorman was in it.

The CHAIRMAN. Now, you charge that after Mr. Marshall was appointed district attorney this firm formed this conspiracy, or that before he took this office Mr. Marshall and his partners formed the conspiracy? In other words, we want to know if you charge that Mr. Marshall was a member of the conspiracy?

Mr. BUCHANAN. I charge Mr. Marshall with being a member of the conspiracy.

The CHAIRMAN. Have you any evidence of that fact?

Mr. BUCHANAN. I have the name of a man here who can give evidence. I can also get some other names if you desire them. I don't believe any of these lawyers will want to come here without being subpoenaed to come—maybe I can find some that will. It seems that there is a little fear about their interests being run over if they do anything in conflict with the wishes of this crowd.

I take it that this matter is not for the public; it is for the committee? Isn't that correct?

The CHAIRMAN. This is an executive session; yes, sir.

Mr. BUCHANAN. It is not supposed to be given out to anybody?

The CHAIRMAN. No, sir; this is purely a preliminary examination, and it is regarded as confidential committee information.

Mr. BUCHANAN. Now in regard to one of the other charges—

Mr. WILLIAMS (interposing). Mr. Buchanan, before you leave that—you have made a general charge here that there was a conspiracy, in which Marshall was a party, to control business—properly of course. Can you give us some information as to specific instances where that was done? What they did to that end?

Mr. BUCHANAN. I might perhaps have some one here in five minutes to give you instances.

Mr. WILLIAMS. Can't you do it?

Mr. BUCHANAN. No, I don't think it is up to me to undertake to bring evidence before this committee. I understand that is the business of this committee, after I point out specific charges here and the grounds for the charges. I am telling you that I can get attorneys here who will name these cases. If the committee wants to hear them in regard to the Osborne case and some others, I can have Slade & Slade here—two brothers—in five minutes. Does the committee desire that I go ahead with some further matters?

The CHAIRMAN. Of course, Mr. Buchanan, that is largely with you. The committee would like to know the evidence, the charges you make against this man, the nature of the charges from the facts, and the witnesses by whom you propose to prove the charges. That has been customary before this committee in the past.

Mr. BUCHANAN. I have been giving the committee some of these witnesses and the sources of information to be obtained.

I have here a case, too, but it is a great deal of work to go into it. This all can be verified, as I understand it, but I think I will hold that for further evidence, if the committee hasn't any objection to that. What does the committee say about listening to Slade & Slade about this matter. They are two lawyers from New Haven and New York.

The CHAIRMAN. The first statement to get is what the charge is on which you wish them to be heard.

Mr. BUCHANAN. You asked me to cite instances where this conspiracy is.

Mr. NELSON. Does that bear upon the conspiracy charge—this Osborn case?

Mr. BUCHANAN. The Osborne case and also the statement that I have just made. My friend here from Illinois asks me to give specific cases.

Mr. NELSON. I would like to have Mr. Buchanan, if he will, formulate the charge under which he thinks the Osborne case comes.

Mr. BUCHANAN. There is some doubt in my mind if that comes under the last paragraph; whether "high crimes and misdemeanors" covers that.

Mr. NELSON. State in general, if you please, what the offense is under which the Osborne case comes.

Mr. BUCHANAN. That is abuse of the proper station of the district attorney for the southern district of New York—abuse of his power.

Mr. NELSON. In what way?

Mr. BUCHANAN. Well, that is a case in the State court. He started into this Osborne case by charging Rae Tanzer and others connected with it of using the mails for blackmail purposes. I have copies of the letters, and if there is any blackmail in the letters I don't understand it. It is a clear case where he had interfered to stop action in the State courts, as I understand the case. But if the committee wants information on that I will say it will be much better to have those who are fully familiar with it state the case to you.

Mr. DANFORTH. Can you formulate the charge so that we can hear what the charge is, not assuming the charge to be true?

Mr. BUCHANAN. The only evidence of the specific matter of charges, I will say, is that he has used his office to slander through the newspapers.

Does the committee care to express an opinion as to whether or not that last paragraph covers about everything? If not, I do not care to go any further into this at this time.

The CHAIRMAN. Speaking as the chairman of the committee, we could not present articles of impeachment to the House or Senate covering only that charge. We have to specify what the charges are that constitute high crimes and misdemeanors. It is supposed that every charge lodged against a man with intent to impeach is a high crime and misdemeanor. Simply to charge a man with being guilty of high crimes and misdemeanors would be objected to as multifarious and indefinite. The Senate and House would require us to specify the charges and state what high crimes and misdemeanors had been committed, not a blanket case. That is why we want you to specify just what your charges are.

Mr. BUCHANAN. Well, as I understand it this covers everything, but as lawyers practice these things I find that you have got to iterate and reiterate facts to embody all that you want.

The CHAIRMAN. But if there was a charge made against anybody, you or me or any other individual in the United States, an indictment charging you with being guilty of misdemeanors or crimes, they would have to specify the particular facts that constituted the crimes and misdemeanors.

Mr. BUCHANAN. Now, I am trying to specify the charges in these impeachment charges by answering your questions, and by saying "other high crimes and misdemeanors" my understanding is would bring in anything I want to take in.

The CHAIRMAN. Before you can take up anything on the charge we have to take it up, and before we can take it up you will have to supply us with what these crimes and misdemeanors consist of.

Mr. BUCHANAN. Now, my idea of it would be, perhaps, for the committee to do that. If the committee would consider it no reflection, I will put in by amendment to my charges something where there will be no doubt about covering everything I want to.

Mr. NELSON. Our colleague, Mr. Buchanan, is not a lawyer, therefore I think we might as well discuss it in his presence. That there is one specific charge that Mr. Marshall has abused his power as district attorney in that he has failed to prosecute where it is a clear case. That in itself would be enough for impeachment. Another blanket clause, a general charge, would enable us after we had gone into the investigation to look into any matter that may come to our notice. We may find, when we begin the investigation, other specific charges.

Mr. CARLIN. Wouldn't that be true if we were actually engaged in an investigation under a resolution? But the question is now whether we shall recommend to Congress a favorable report upon this resolution.

Mr. NELSON. That is what I say; so that Mr. Buchanan ought to give us one or two impeachable charges. After that, of course, we can broaden the inquiry.

Mr. BUCHANAN. My position is that all these charges are an—

Mr. CARLIN. We are trying to explain to you—as you are not a lawyer—that the only matter before the committee is whether we should recommend to Congress that impeachment proceedings be had, and that you must give us some fact that would justify us in making that recommendation.

Mr. BUCHANAN. In other words, Does the committee take the position that an impeaching Member must furnish witnesses and documentary proof both before this committee—before any action will be taken by the committee?

Mr. CARLIN. I do not know what position the committee would take, but I know heretofore it has been the universal practice to require some substantial facts, either by way of documentary evidence or verbal proof, that would justify us in making this recommendation. So far as the witnesses are concerned, if you will furnish the names of the witnesses and tell us what particular charge you expect to justify with reference to each, I have no doubt the chairman of the committee would first summon the witnesses before reporting to the House.

The CHAIRMAN. The question before this committee now, Mr. Buchanan, is whether or not we will go to the House and ask that they give this committee authority to subpoena witnesses and swear them and investigate the charges which you have made or will make, looking further to the impeachment of this man. Your testimony this morning is preliminary to a preliminary examination. We are going through the same course now that Judge Parke was required to go through when Judge Wright was investigated. Judge

Parke was required to come before the committee and make statements and bring affidavits sustaining the charges alleged in the impeachment.

Mr. NELSON. Not to prove, but to make a *prima facie* case.

The CHAIRMAN. Not to prove the case, but to bring some evidence on which the committee would feel like asking the House to give us full authority to investigate charges made. In going to the House we must be able to tell the House what charges we would like to have investigated and what conduct had resulted in high crimes and misdemeanors.

Mr. BUCHANAN. Could I get the expression of the committee, then, as to whether or not they would consider it any reflection or breach of congressional conduct on my part after bringing impeachment charges to supplement them by another resolution covering specifically some of the cases that I feel prepared to furnish abundant proof of?

The CHAIRMAN. I think that is entirely with you. I do not think we would have any objection to any course you pursue. You might amplify them here.

Mr. IGOE. Mr. Chairman, wouldn't it be just as well if Mr. Buchanan was to have time to take up these different specific charges he has made and inform the committee what he expects to prove; give the names of witnesses and briefly what he can show by them, and then under this general charge state other instances he may have, with the names of witnesses, formulating in a more definite way the specific charge he intends to prove? Then we can see on that whether we want to go to the House with it.

The CHAIRMAN. I will state, Brother Igoe, that is exactly what I requested Brother Buchanan to do before the holidays, and if he prefers to amplify and specify more fully in the House we haven't any objection to that.

Mr. IGOE. Amplification in the House gives us no more information than we have now.

Mr. BUCHANAN. But it does this: The amplification in the House covers everything and leaves no doubt, if I supplement my impeachment charges with another resolution I am sure your committee could have a great many witnesses to bring before you.

Mr. CARLIN. Now, this question as it occurs to me is in this condition: You have made the general charge of malfeasance in office. Under that general charge, if you have any specific offenses that you can state there would be no necessity for you to introduce another resolution. If under that charge you had sufficient proof to justify the chairman in proceeding, the committee itself would ask for the proper authority and would specify the charge that Mr. Marshall would have to answer. You can save the time of the committee, the House, and yourself if you would give any single fact that would justify the Congress of the United States in impeaching Mr. Marshall, or this committee in recommending it. You would save time for all by presenting it here now.

Mr. BUCHANAN. I think I have given some facts here this morning and pointed out witnesses whereby we can prove it.

The CHAIRMAN. What witnesses did you designate with reference to the suppression of the investigation of the Tobacco Trust?

Mr. BUCHANAN. The attorneys of independent tobacco companies; those interested.

The CHAIRMAN. Do you know who they are? Can you give us their names?

Mr. BUCHANAN. I gave you one name there in the statement—Henry Hunter.

Mr. WILLIAMS. It does not seem to me, Mr. Chairman, that the mere charge that he suppressed prosecution of the case is sufficient without information as to the character of the case; what the case was; whether it constituted a case that ought to have been prosecuted.

Mr. VOLSTEAD. It is perfectly plain to anybody that has had any experience in prosecuting that it would be very necessary to know just what the facts were that were presented to the attorney. Unless that is made plain so that it is a clear case of neglect of duties, he never could be indicted or impeached upon anything of that kind—and then, of course, it would depend upon the character of the witnesses, the probability as to whether there would be any conviction. The fact that somebody makes a complaint about a prosecuting officer would not necessarily make the prosecuting officer guilty of neglect of duty unless he has plainly misused his judgment and discretion in reference to a case, because he has got to have some discretion. I would like very much if Mr. Buchanan could state what facts were presented to the attorney; what sort of evidence, if any, did they have to substantiate it? Now, these practices that are complained of may have been notorious; they may have been easy to prove. They may not. It seems to me that that matter might have been presented here so that we would have some idea of just what he knew.

Mr. BUCHANAN. The facts would be based upon the decision of the United States Supreme Court. They were operating in violation of that.

Mr. VOLSTEAD. Well, but what did they do? What facts did they present? Do you know any of the facts yourself?

Mr. BUCHANAN. That is stated. That is a matter of record before Mr. Marshall's office. Of course, I could not get them.

Mr. CARLIN. You have made a very serious charge, and it is to be assumed that you do it from facts in your possession. Now, if you have those facts, if you will give them to the committee we can then determine as to whether they present an impeachable offense or not. But the mere reiteration of the charge—

Mr. BUCHANAN (interposing). The committee, then, takes the position that it is necessary to get these witnesses?

Mr. CARLIN. No; tell us what facts the witnesses will testify to; then the committee can determine whether it will get the witnesses or not.

The CHAIRMAN. I will state, Brother Buchanan, that Mr. Neely, a member of this committee from West Virginia, in his responsible position as a Member of the House, impeached Judge Dayton on 22 different charges. That resolution was referred to this committee, and before we ever took any action toward asking the House to give us authority to investigate by subpoenaing witnesses, etc., Mr. Neely was required to come before the committee and state his case. He stated what he expected to prove; he stated what the witnesses would prove, and he had practically a dozen personal witnesses before

this committee. And after that preliminary investigation the committee asked the House—feeling that they had enough to justify them in asking the House to give us authority to subpoena and swear witnesses and investigate the matter as to whether we should recommend impeachment. We are simply asking you to do the same thing that Mr. Neely was asked to do, and that Judge Parke was asked to do in the impeachment of Judge Wright, and that has been done in most other cases except the Florida case, where the legislature passed a resolution impeaching the judge, and when that was referred to the Judiciary Committee, power to investigate went with it. Since that time the path that we are pursuing now has been pursued in every case that I know anything about.

Mr. BUCHANAN. In other words, if an officer refuses to do his duty in prosecuting, you have got to point out what the violations of the law were that he refused to prosecute. Is that the idea?

The CHAIRMAN. Well, I do not know that it is quite that broad, but I think you, as a layman, can realize that the committee would like to know some specific charge.

Mr. BUCHANAN. I am only asking for information now.

The CHAIRMAN. The committee would like to have some specific charge which you could claim is a violation of duty.

Mr. IGOE. May I ask a couple of questions there? First, the two charges relative to the failure to prosecute violations of the law by criminal trusts and monopolies, and prostitution of his office to the service of those great trusts. Now, is there any other case aside from this Tobacco Trust case?

Mr. BUCHANAN. Oh, yes.

Mr. IGOE. That is the only one you have mentioned here.

Mr. BUCHANAN. That is the only one mentioned, but the Ammunition Trust is another, the armor-plate ring. Of course their activities in violation of law are so common that people and courts and Congress and everyone else, I guess, takes it as a matter of fact that they are going to do that. The Secretary of the Navy pointed out, for instance, in the last two annual reports to Congress about the armor-plate ring and its closed-shop methods in the way of trusts that the Government was at the mercy of it. Of course I can not give any connection in these things.

Mr. WILLIAMS. Do you want to lay all that on Mr. Marshall?

Mr. BUCHANAN. Their activities are largely engaged in the southern district of New York. I am not prepared at this time to take up that case. I believed I had sufficient information to give the committee a lead for action.

Mr. IGOE. In the Tobacco Trust case, is the prosecution that was refused by Mr. Marshall in the original Tobacco Trust case, or does it grow out of some processes that have been engaged in since dissolution?

Mr. BUCHANAN. Since dissolution, in violation of the decision of the Supreme Court.

Mr. IGOE. Now, it is subsequent to the prosecution of the civil case brought by the Attorney General. The case in the Supreme Court was under the direction of the Attorney General's office, by special prosecution, was it not?

Mr. BUCHANAN. That is my memory, that that was the case.

Mr. IGOE. These charges that are made are relating to practices indulged in in the city of New York since the dissolution?

Mr. BUCHANAN. Oh, yes.

Mr. WILLIAMS. And in violation——

Mr. BUCHANAN (interposing). Of the orders of that court.

Mr. IGOE. I want to know whether the Attorney General has ordered the district attorney to proceed with the prosecution, or whether he has simply asked him to investigate the facts?

Mr. BUCHANAN. To investigate, and if there are sufficient facts, to prosecute.

Mr. IGOE. Not to report back to the Attorney General, but to take it up on his own responsibility?

Mr. BUCHANAN. Yes.

Mr. NELSON. Have you any documentary evidence as to the correspondence between the Attorney General's office and this district attorney?

Mr. BUCHANAN. I have not that at present.

Mr. NELSON. Well, have you seen any?

Mr. BUCHANAN. Yes.

Mr. DANFORTH. What is the effect of that correspondence? Tell us what you saw of the correspondence.

Mr. BUCHANAN. I have told you that here.

Mr. NELSON. What is it?

Mr. BUCHANAN. The correspondence was that the Department of Justice ordered the district attorney to prosecute—to investigate, and if there was sufficient evidence, to prosecute. I have stated that here this morning. I do not know why it should be necessary to repeat it.

Mr. NELSON. It was to get it clear. The Attorney General left it discretionary with the district attorney as to prosecuting.

Mr. BUCHANAN. I do not know about that.

Mr. NELSON. Mr. Buchanan, you see the point is—I for one would not care to investigate the district attorney, if he is simply acting under the directions of the Attorney General, for we would have the wrong pig by the ear.

Mr. BUCHANAN. Here is the complaint of August, 1913, where they again take it up with the Attorney General.

Mr. NELSON. They, who? The independent companies?

Mr. BUCHANAN. Yes. The Attorney General made the same disposition of this complaint as of the other. Now, you remember, don't you, I stated about that, that it had been referred to the district attorney of New York and he also referred it to two of his subordinates.

Mr. IGOE. You said nothing had been done since August, 1913?

Mr. BUCHANAN. They procrastinated and dilly-dallied, so to speak, until nothing came of it.

Mr. WILLIAMS. Do you mean that they did not even investigate or look into it? Which do you mean? Did they investigate?

Mr. WHALEY. It seems to me that we are spending a great deal of time here fighting over a thing, when we could find out just what has been done from the Department of Justice.

Mr. BUCHANAN. I do not know that I understand the English language well enough to put it properly before you gentlemen.

Mr. WHALEY. We can ascertain it from the Attorney General's office in a short time.

Mr. NELSON. But the Attorney General's office is directly involved on the other side of this question.

Mr. WHALEY. It can not be involved on the question of correspondence between the district attorney's office and this office. It is a matter of record that we can find out.

Mr. WILLIAMS. Did he refuse to investigate it or did he, after investigation, refuse to prosecute?

Mr. WHALEY. As I understand it, the first thing is, what were the instructions of the Attorney General to Mr. Marshall? The second, did he carry out those instructions? That is a matter of record at the Attorney General's office.

Mr. BUCHANAN. It seems to me that my friends from Illinois can not remember my statement, or else he does not think my statement amounts to much about it.

Mr. WILLIAMS. No, I wanted to understand it.

Mr. BUCHANAN. I will repeat what I said about it before, for your benefit, if the Committee desires it.

The CHAIRMAN. Well, sir.

Mr. BUCHANAN. This is the first complaint the Attorney General referred to H. Snowden Marshall, United States district attorney for the southern district of New York.

Mr. CARLIN. Who was that complaint against, Mr. Buchanan?

Mr. BUCHANAN. It was against the Tobacco Trust.

Mr. CARLIN. Is that a fact? Wasn't it against the distributing company?

Mr. BUCHANAN. It was against the American Tobacco Co. and the Metropolitan Tobacco Co. Of course, you can ascertain whether it is the fact as well as I can. This is my information and I believe it is the fact. The Attorney General referred the complaint to H. Snowden Marshall, the United States district attorney for the southern district of New York for investigation and such action as he might find necessary. Mr. Marshall notified these complainants to appear before him with their evidence and testimony, in order that he might proceed in accordance with the direction of the Attorney General. When the parties appeared, he referred them to two of his assistants, Mr. Stevenson and Mr. Thompson. These two men proceeded to procrastinate and tire out the complainants by long drawn out and unnecessary hearings and dragged the proceedings along. Repeated complaints were made to Mr. Marshall. Demands were made that he act. The trust continued to rob the six million people of New York and environs, just as they had in the past. They continued to drive out the business, the independent retail dealers and distribute the business of the independent jobbers in tobacco as they had before, until finally, in February, 1915, utterly dissatisfied with the delay and procrastination of Mr. Marshall and in the hope of forcing him to take some action, the Wholesale Tobacco Jobbers Association of New York filed a new complaint and a new set of charges with the Attorney General, reiterating all the allegations contained in the complaint of August, 1913.

The Attorney General made the same disposition of this complaint as of the others. He referred it to Mr. Marshall, with instructions to take the proof and if evidence existed to support the charges, to

prosecute the conspirators. Mr. Marshall and the two assistants to whom he delegated the work of dealing with these complaints, proceeded with the same tactics of tiring out the complainants with long drawn out hearings and frequent adjournments. Nothing has been done to stop the robbery of the Tobacco Trust, in consequence of this action on the part of Mr. Marshall and his subordinates. They have robbed the people of the city of New York and environs out of several thousand dollars a day, and this has continued since 1913 down to the present time. I will repeat the rest of what I have said about that, if the gentleman wants it.

Mr. NELSON. It amounts to a denial of justice, a charge of all this deliberate procrastination and delay, so that an injustice has been done. Have you any witnesses that would come before the committee to give us the facts?

Mr. BUCHANAN. I know Mr. Hunter, the attorney for the independent tobacco companies. There may be other witnesses to be obtained. Some of them probably would have to be obtained by subpoenas.

Mr. NEELY. Mr. Chairman, what is the next thing in order to enable us to come to an issue of this case? There is one charge which has been presented. If Mr. Buchanan has any evidence of these material facts which he has just alleged, ought not that evidence be brought before this committee in order that a prima facie case may be established which would warrant an investigation by the committee? That is, if there are such facts in existence as will convince this committee that it is a prima facie case.

The CHAIRMAN. Of course, the committee would like to have those facts if Mr. Buchanan is in position to give them to us.

Mr. NEELY. Following the precedent that this committee established in the Sixty-third Congress, in one or more cases, will not the committee require as a condition precedent to asking for authority to summon witnesses, before the committee, that Mr. Buchanan himself bring some material evidence of the specified facts constituting these offenses which are broadly charged in his resolution?

The CHAIRMAN. That has been the custom heretofore.

Mr. NEELY. If that is true, isn't it the duty of the committee, to Mr. Buchanan as a Member of the House, to tell him that these specific things will be required, and without them, provided the committee feels like following the precedents heretofore established, that nothing will be done with his resolution, so as to enable him to get the material evidence that is necessary to form a basis for this investigation?

The CHAIRMAN. Of course, I would not undertake to tell Mr. Buchanan what would happen in case he did not, but I requested him in December to amplify and specify his charges.

Mr. NEELY. I understand that Mr. Buchanan said he could get Mr. Hunter here, the attorney for these jobbers, and that he could explain what those facts were. Didn't you?

Mr. BUCHANAN. Yes, sir; I have got some people here to-day. I guess, though, on account of the position of the committee, I will have to ask for further time to get things in shape, and in the meantime I would like—one of the cases especially it is uncertain whether my charges specifically cover it—and as the chairman says that the

committee will have no objections, I think I will submit my impeachment charges in the House.

Mr. WILLIAMS. I do not want Mr. Buchanan to infer——

Mr. TAGGART. You mean to abandon these particular charges here?

Mr. BUCHANAN. No, indeed, but try and supplement them.

Mr. WILLIAMS. My position as a member of the committee is, it seems to me that we must first know that this concern, the Tobacco Trust, so called, actually violated the laws and for this violation of the law, that these facts were brought to the attention of the district attorney, and that he probably refused to prosecute. Now, it seems to me that we must have an opportunity to judge for ourselves what our understanding of the facts constituting these violations are, and if there be no violation on the part of the Tobacco Trust, then the whole thing falls. We must know what their dereliction consisted of, to know whether or not a duty developed upon the district attorney preliminary to any further proceedings.

Mr. CARAWAY. Suppose there is a charge made that the trust is engaged in a business in restraint of trade, and the district attorney refused to investigate that, though directed to do so by the Attorney General.

Mr. WILLIAMS. Even then, if there was no violation——

Mr. CARAWAY (interposing). He refused to do that, and therefore it is never ascertained whether there is a violation or not. Would he be derelict in his duty?

Mr. WILLIAMS. No, sir; not unless there was an actual violation on the part of this company. It is essential that we know that there was a violation on the part of this company, and that they should be prosecuted, before a duty devolves upon the Department of Justice.

Mr. CARAWAY. You think, then, he could refuse to act, although he was directed to do so? Suppose that he might assume there was no violation?

Mr. WILLIAMS. If there is no violation, there is no offense on his part.

The CHAIRMAN. My recollection is that the Attorney General has entire control over the prosecution of trusts throughout the United States under the anti-trust law, and that no district attorney would bring suit unless directed by the Attorney General of the United States. I think, since the Clayton Act was passed an individual may sue, but up to that time no suit against a trust for unlawful restraint of trade could be instituted except at the instance of the Attorney General of the United States, who had practically entire control of it, according to my recollection.

Mr. CARLIN. Is not this a fact, Mr. Chairman, that the question before the committee is this: Whether a charge has been made and sufficiently supported by testimony that would justify this committee in recommending to the House of Representatives impeachment proceedings? That is the position the committee finds itself in, as I see it this morning. A number of charges have been made and one blanket charge has been made. Now, if there is insufficient testimony here to show that there is probable cause for the removal of this officer, then it would be the duty of the committee to ask the House for authority to institute impeachment proceedings, but without some proof upon it to base that recommendation on, the com-

mittee will be powerless to report anything although the charges covered even a broader ground than they do now.

Mr. WHALEY. Mr. Buchanan has stated these several offenses in his impeachment charges. Now, so far as I have heard here to-day, I have only heard him state one instance, which he brings forth here—that is the failure to prosecute the trust. Now, do I understand Mr. Buchanan to drop the other charges?

Mr. BUCHANAN. Oh, no. No, indeed.

Mr. WHALEY. What is the proof as to the other charges, because if you have any proof as to the others the committee can act on those just as well as on the first one. There are five charges.

Mr. BUCHANAN. I would say this: Let me understand; I perhaps have not fully understood what I have got to do in regard to this thing. It seems to me that the position of the committee, if I have understood it to be correctly expressed, puts a great burden upon the Member who brings impeachment charges, and I have got a different impression of it from what I had before. I thought that the impeaching Member all he had to do was to point to sources of information and then it was the duty of the committee to secure that information, or evidence, if you would call it that, to substantiate the charges.

The CHAIRMAN. Your statement is almost correct.

Mr. BUCHANAN. That is not the position that has been taken here.

The CHAIRMAN. Absolutely.

Mr. BUCHANAN. No; my friend from Illinois said that the impeaching Member brings the facts before this committee.

Mr. WHALEY. Bring out the facts. There is not anything to proceed on.

Mr. BUCHANAN. I also understood my friend Mr. Carlin there to make the same statement.

Mr. CARLIN. No. My position is this, based on previous experience with the committee, that if you will give us any facts which will even show probable cause of guilt, then we would be justified—with the names of the witnesses—then we would be justified in asking Congress to initiate impeachment proceedings. This is not an impeachment proceeding. The only thing before the committee this morning is a resolution asking that this man be impeached. Now, then, before the committee can act intelligently on that resolution, it must have some facts either to sustain some particular charge or some new fact which would justify us in asking for impeachment under the general clause that you have of general misconduct; but up to this time, if you have the facts, you have not presented them, and what the committee is trying to get at is to get you to present such facts as you have.

Mr. BUCHANAN. I think I prefer to ask for further time, and in the meantime supplement my charges in a way that—no doubt they are about what they will cover. I do not want to leave any doubt now. Would I have a right to have an attorney to represent me before this committee?

The CHAIRMAN. That is with the committee.

Mr. DANFORTH. Is it not true that we allow him the broadest possible opportunity of all kinds to bring these facts before us to substantiate these charges?

The CHAIRMAN. Yes, sir.

Mr. DANFORTH. All we want is the charge and enough facts in our possession to make a prima facie case, so that we will not prosecute a man or start a prosecution of this kind without reasonable proof, and so that we will not take the time of the House or our own time without something prima facie at least to act upon.

Mr. WILLIAMS. You are entitled to have an attorney; get your attorney and formulate the charges and get an attorney who understands how to put it in form and bring it here in that form. Specify your charges constituting your prima facie case and state the sources of information and the names of witnesses, and then we will know how to proceed.

Mr. BUCHANAN. My question, of course, was, could I be represented here in presenting this, as I see now that it is necessary to have a lawyer that understands all about this and you want certain facts, etc., which is going to make a burden upon me.

The CHAIRMAN. I do not want you to feel that way about it. Do not misunderstand me that I complain. As chairman of the committee I want to tell you that you can get anybody to help you get up your statement of facts, that you can do it yourself if you want to, which constitutes a misdemeanor, a high crime, or malfeasance in office, and state your facts, and give us the names of the witnesses by which you expect to prove those facts, and we can act intelligently.

Mr. BUCHANAN. The committee does not object to giving me further time?

Mr. VOLSTEAD. It seems to me that you ought to put your charges somewhat in the form of an indictment, stating the facts which you expect to be able to prove, and then indicate what witnesses can be brought for the purpose of establishing those facts. Then we will have something to go on. Now, you see, if the facts are as stated in the general form in which you have, it leaves all sorts—for instance, this refers to the Tobacco Trust.

Now, it is perfectly evident that before we can go before the House that we would have to be able to make some showing that a certain state of facts were stated to this attorney, that a certain violation, of which proof could be secured, had been committed, and submitted to the attorneys. Now, when we know that a crime has been committed and know that it was his duty to prosecute, and that he failed, neglected, or refused to do it, then you can see that we might charge him with something, but on the other hand you simply say that he neglected, simply refused to do what he ought to do and do not explain what facts he knew, do not explain how and in what respect he was guilty of negligence, why it is simply a matter of mere guess, and we can not hardly be expected to go before the House and say we are willing to investigate a thing of that kind, without knowing that we are going to be able to make a decent showing, and we can not afford to spend the people's money unless we are able to make a decent showing upon the question. Now, these attorneys, for instance, that you speak of as having brought these charges, they must be in a position to tell you just what the charges were, because they filed them. They no doubt have copies, and you can get those copies and bring them in here. They can show you just exactly the kind of testimony that was submitted, and then when we have the testimony and the charges, we are in position to judge

whether he did refuse, whether he did neglect. He has got to be permitted to use his judgment if it was a doubtful case.

Mr. GRAHAM. Is not Mr. Buchanan correct that the burden is on him, having made these charges, to satisfy the committee that there was sufficient or at least probable cause for investigation and impeachment by the Congress of the United States?

Mr. VOLSTEAD. Why, certainly.

Mr. GRAHAM. Until he does satisfy the committee to that effect, the committee is not going to take the burden from him and take it upon themselves.

Mr. VOLSTEAD. There would be no object in having this investigation, because the House might act without it.

Mr. GRAHAM. If you can satisfy the committee, the committee will report it to the House and start an impeachment proceeding, and have the responsibility for it.

Mr. BUCHANAN. I understand that the committee has to have satisfactory evidence before it starts, but I will say to you gentlemen now that the evidence of the most offensive malfeasance in the office of this district attorney for the southern district of New York can not be gotten without the power of this committee to go after it. No individual can get it without that power, and if I have to bring everything in here—

Mr. WILLIAMS. Can not you get affidavits?

Mr. BUCHANAN (continuing). Of course, it is going to be a matter of impossibility, and I will say this further, and I would prefer the stenographer not to take this down.

(Here followed the statement of Mr. Buchanan, which the chairman requested the stenographer not to report.)

Mr. DANFORTH. May I ask this question? You know the difference between prima facie proof and convicting proof, don't you?

Mr. BUCHANAN. Well, yes.

Mr. DANFORTH. Could you not give us—

Mr. BUCHANAN (interposing). I would say, though, that I thought if I would point to the source of information, that would be sufficient.

Mr. VOLSTEAD. I did not ask you—you say you have got the proofs?

Mr. BUCHANAN. I am not stating that you did, any more than that statements of the gentlemen of this committee have got me under an entirely different impression as to what it was necessary on my part to do in this case.

Mr. TAGGART. Let me make a suggestion right here. The Attorney General's office has an investigating division, and they are directed to investigate charges against trusts. They may have something on this matter. I take it for granted that when complaints are made to a district attorney and he knows of them that he ought to correspond with the Attorney General and ask his advice and his direction in the matter, and if the complaints are sufficiently definite and clear and substantiated by competent witnesses and he does not advise the Attorney General, he does not do anything, then it would be a proper matter to inquire why he did not proceed. Now, I suggest that the Attorney General be requested to furnish the correspondence in this matter and the head of the investigating bureau in the Attorney General's office be requested to furnish this committee with any information that he may have on the matter, and in that way, per-

haps, some information might be obtained. If you have a number of witnesses, Mr. Buchanan, who went to this district attorney with anything like affidavits or proof, or anything of that kind that would appeal to a district attorney in the way of enforcing any of the laws of the United States, and they were ignored by the district attorney, get the names of those people who went to his office and furnish them to the committee and I for one shall ask to have them brought in here.

The CHAIRMAN. What is your pleasure just now, Mr. Buchanan?

Mr. BUCHANAN. I desire further time to try to bring this information which I understand now that you want me to bring.

The CHAIRMAN. Will you notify the chairman of the committee when you desire to be further heard before them?

Mr. BUCHANAN. I think some time perhaps this week, perhaps to-morrow or next day, but I can not say for certain now.

Mr. TAGGART. I suggest further that Mr. Buchanan, being a layman, be allowed to appear by attorney, any attorney whom he desires to bring before the committee.

The CHAIRMAN. Gentlemen, if there is no objection, this matter will be continued until Mr. Buchanan further notifies the committee he would like to be heard. There is no objection and the matter will take that course, according to your request.

Mr. BUCHANAN. I expect to be ready some time this week, and I will let you know.

(The committee thereupon adjourned.)

IMPEACHMENT OF H. SNOWDEN MARSHALL.

January 12, 1916.

Mr. BUCHANAN of Illinois. Mr. Speaker, I rise to a question of the highest privilege. By virtue of my office as a Member of the House of Representatives I impeach H. Snowden Marshall, United States district attorney for the southern district of New York, of high crimes and misdemeanors.

I charge him with having conspired with persons, firms, and corporations, their agents and servants, to grant such persons, firms, and corporations the privilege of violating various criminal, neutrality, interstate commerce, or custom laws of the United States in the southern district of New York.

I charge him with securing for persons or corporations great financial profit in consequence of the violation of the United States laws.

I charge him with corruptly and collusively participating in such conspiracies.

I charge him with corruptly neglecting and refusing to prosecute gross and notorious violations of various criminal, neutrality, custom revenue, and antitrust laws of the United States within said judicial district.

I charge him with corruptly inducing and procuring grand juries to return into the district court for the southern district of New York of indictments charging crimes without there being evidence before said grand jury which would in any degree justify the finding and filling of such indictments.

I charge him with being guilty of oppression in corruptly procuring indictments from the grand jury in said district charging reputable citizens with crime, although there was no evidence before the grand jury which would in the least warrant such charges.

I charge him with corruptly conspiring with other persons to spread broadcast throughout the United States maliciously false newspaper publications and reports, emanating as official statements and purporting to describe results of investigations conducted by said United States attorney and his assistants, with the object of destroying friendly relations between the United States and one or more foreign Governments.

I charge him with unlawfully and feloniously abusing the legal process before the grand jury in said district of New York, the Secret Service, and the Bureau of Investi-

zation and Inquiry of the Department of Justice in furtherance of such conspiracy aforesaid.

I charge him with having knowledge of the existence of circumstances from which knowledge is imputed to him that large sums of money have been expended for or on behalf of foreign Governments and of various purveyors and manufacturers of war munitions for the purpose of influencing the actions of said United States attorney in furtherance of a conspiracy.

I charge him with having corruptly neglected or refused to prosecute men who have made the port of New York, within said judicial district, a military or naval base for foreign belligerent powers.

I charge him with corruptly neglecting and refusing to prosecute violations of Federal statutes prohibiting the loading and shipment of explosives on ships carrying passengers within said judicial district.

I charge him with corruptly neglecting and refusing to prosecute violations of the foreign-enlistment act and laws of the United States within said district.

I charge him with having corruptly used the powers of his office for the purpose of slandering and libeling peaceable and law-abiding people to their great injury.

I charge him with having abetted, approved, acquiesced, and permitted unlawful and oppressive misuse of subpoenas and other process before grand juries in said southern district of New York.

I charge him with having deprived law-abiding citizens of their legal rights, privileges, and immunities.

I charge him with aiding, abetting, and approving unlawful expenditures of public moneys in violation of the laws of the United States.

I charge him with being guilty of attempts by private solicitation of influencing the official actions and opinions of judges in the southern district of New York while in the performance of their judicial duties.

I charge him with having used the powers of his office to cause and produce a discrimination in the assignment of judges to conduct trials in said district, so as to discriminate against one or more resident judges.

I charge him with having used the powers of his office to procure or assist in the procurement of judges to be imported into the southern district of New York from other districts for the trial of cases in said district by falsely representing the condition of judicial business within said district.

I charge him with being guilty of private solicitation with intent to influence the official acts and decisions of judges imported as aforesaid.

I charge him with having attempted to corruptly control decisions and official actions of one or more such imported judges.

I charge him with having procured the assignment of one or more imported judges for the conduct of trials in the said district for the purpose of preventing defendants in such cases from receiving a fair and impartial trial at the hands of resident judges.

I charge him with being a party to a conspiracy participated in by his assistant district attorneys and other officials connected with the administration of justice in the said southern district of New York, for the purpose of unlawfully manipulating and controlling the selection of grand and petit jurors in connection with cases in the courts of said district.

I charge him with having been guilty of acts by which the rights of the United States and that of individuals have been unlawfully prejudiced and the orderly and fair administration of justice defeated or obstructed in one or more instances.

I charge him with having employed the powers of his office for the purpose of shielding and to prevent the exposure of unlawful and improper conduct of one James W. Osborne in relation to facts involved in civil litigation which was pending in the State court in the State of New York.

I charge him with unlawfully protecting the said Osborne and others from prosecution for the violation of United States laws.

I charge him with willfully and corruptly refusing and neglecting to prosecute gross and notorious violations of the United States statutes committed by said James W. Osborne and others in the city and State of New York within said district.

I charge him with having prostituted the office of United States district attorney for the southern district of New York.

I charge him with having used the powers of his said office as United States district attorney to corruptly and willfully defame, slander, and injure the good name and professional standing of law-abiding citizens of the United States, to their great injury, for the purpose of protecting the private individual interests of James W. Osborne.

I charge him with having corruptly failed, neglected, and refused to prosecute persons who, while acting as witnesses for the United States in the trial of causes, committed the crime of perjury, subornation of perjury, and conspiracy in connection with

the cases of United States against Rae Tanzer, United States against Frank D. Safford, and United States against Albert J. McCullough et al.

I charge him with having used and employed the United States grand jury in the southern district of New York for the purpose of attempting to establish records which might be used in defense of James W. Osborne, H. Snowden Marshall, Roger B. Wood, and Samauel H. Hershenstein (the last two being assistant United States district attorneys under said H. Snowden Marshall), and not for the purpose of investigation of violations of the United States laws.

I charge him with corruptly and willfully failing to remove certain of his assistant district attorneys who destroyed documentary evidence material in the trial of a pending case in the United States district court for the southern district of New York.

I charge him with corruptly and maliciously causing to be instituted criminal proceedings against Rae Tanzer and others for the purpose of protecting James W. Osborne, a special United States district attorney and a personal intimate friend of said H. Snowden Marshall.

I charge him with corruptly and willfully failing and refusing to present to the court the trial of cases material and important evidence and in concealing or assisting and acquiescing in the concealment or destruction of material and important evidence relating to pending cases in the United States district court for the southern district of New York.

I charge him with being corrupt, grossly negligent, and unfit to retain the office as United States district attorney for the southern district of New York.

I charge him with having willfully and persistently violated the laws of the United States in connection with the performance by him of the duties of such United States district attorney for said southern district of New York.

I charge him with having corruptly and willfully withheld and failed to present before the grand jury material and important evidence in connection with alleged investigations instituted before said grand jury by said H. Snowden Marshall in relation to the cases of United States against Rae Tanzer and United States against Albert J. McCullough et al., and others.

I charge him with having corruptly and willfully refused and neglected to take cognizance of unlawful conduct of his assistant district attorneys in connection with the performance by them of official duties as such assistant district attorneys.

I charge him with corruptly participating in or acquiescing to the presentation to the court in trial of cases in the southern district of New York of alleged evidence which he knew to be untrue and manufactured, or in the manufacture of and attempt to manufacture such alleged evidence.

I charge him with producing willful injury and wrong to litigants in said district court and to citizens of the United States by his unlawful and improper conduct.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Monday, January 17, 1916.

The committee met at 10.30 o'clock a. m., Hon. Edwin Y. Webb (chairman) presiding.

The CHAIRMAN. Gentlemen, at the request of Mr. Buchanan I called this extra meeting of the committee this morning for the purpose of hearing him further on specifications of the charges against Mr. H. Snowden Marshall. Mr. Buchanan is present this morning and asks that Representative Hill be permitted to be present as one of his attorneys. That is right, is it not?

Mr. BUCHANAN. Yes.

The CHAIRMAN. Now, Mr. Buchanan, the committee will be glad to hear from you.

Mr. BUCHANAN. Mr. Chairman, I have another matter to present, and I have asked Mr. Hill to be present this morning as my attorney to take the matter up with you. That is practically in accordance with what I put in at the last meeting of the committee. It is a case in which Marie Doran failed to receive proper protection. I have here, if it please the committee, a letter from her to me, with an

affidavit. If it is in accordance with the wishes of the committee, I will just leave that here without reading it.

Mr. DANFORTH. Who is that from?

Mr. BUCHANAN. That is from Marie Doran.

Mr. GARD. Is that in support of one of the charges of impeachment?

Mr. BUCHANAN. This will come under the head of the charge of corruptly neglecting and refusing to prosecute violations of the foreign-enlistment act and laws of the United States. That is a question of law, though, in regard to that, and I will let my attorney discuss that.

The CHAIRMAN. What number is that, Mr. Buchanan? I have your charges here.

Mr. BUCHANAN. In the Record?

The CHAIRMAN. Yes, sir.

Mr. BUCHANAN. It is the third from the top of the second column, page 1044 of the Congressional Record of January 12, 1916.

Now, I have called attention to the violation of the trust laws in the tobacco case, and now I am going to turn the matter over to Mr. Hill.

The CHAIRMAN. Do you want to hear this letter now?

Mr. MOSS. Yes; I would like to hear it.

(The clerk to the committee read the letter and accompanying affidavit submitted by Mr. Buchanan, as follows:)

EXHIBIT No. 2. JANUARY 17, 1916.

(Marie Doran, Dramatist.)

JAMAICA, LONG ISLAND, N. Y.,

January 3, 1916.

HON. FRANK BUCHANAN,
House of Representatives, Washington.

DEAR SIR: Your letter of December 30 received. I inclose herewith a draft of the charges I wish to have preferred against H. Snowden Marshall, United States attorney for the southern district of New York. My affidavit is attached to the charges.

All the matters complained of are within the knowledge of my brother, Frank Doran, of this address, who can testify to and corroborate the same.

The names of those persons implicated in the charges, are those of subordinate assistants, Roger B. Wood, Harold A. Content, and former assistant Charles H. Griffiths; also the names of the defendants, Paul Scott, William F. Burke, and Earl D. Sipe, and a defendant's witness, Jean Barrymore.

The assistants acted under instructions from Attorney Marshall, and, as the defendants were relieved of prosecution for crimes charged against them, through the refusal of H. Snowden Marshall to prosecute, these persons may be eager to testify in his behalf. While I realize that Attorney Marshall is entrenched in a position of great power, with powerful aids back of him, I hope a judicial committee with the power of subpoena, will be able to compel the truth. I can supply the addresses of the persons named above, and if, in the course of whatever investigation may be undertaken, additional witnesses may be required, I can direct you to them.

I want my charges read in the House of Representatives. With this purpose in view, I presented this matter, together with a copy of the charges, to Congressman Charles Pope Caldwell, Representative for the second district of New York. The Congressman vehemently refused to give my complaint any consideration, saying that he was a warm personal friend of Attorney General Gregory; that he used to play with Tommy Gregory at Mrs. Gregory's boarding house, around the corner, in Austin, Tex. He further sought to exonerate the Department of Justice by saying of a complaint laid before Attorney General Gregory, under date of March 25, 1915, that on that date the mind of Thomas Watt Gregory was much distracted by the sinking of the *Lusitania*, which ship was not sunk until May 7. From all of which I am forced to conclude that, in the case of Congressman Caldwell, friendship takes precedence over duty. The Congressman also said that, before he would consider charges and investigate a public official, he wanted some one to hand him \$200,000 to cover expenses.

Am I to understand that you will read these charges, which I assure you in the most sincere manner are true and well founded?

In the case of each complaint which I was compelled to file with the United States attorney in the southern district of New York it was the habit in that district to belittle my complaints. My story was each time reluctantly received by the different assistants, and when arrests were made upon my insistence such insistence aroused the antagonism of these officers.

The complaints began with copyright violations and led to complaints for conspiracy and perjury. It is to the copyright violations I wish to call attention. It was made apparent to me that in the southern district of New York I am regarded as a citizen of no importance, with a form of complaint to be discouraged and discriminated against.

I wish to contrast the conduct of the district attorney in the southern district of New York with officers in other districts. I point to the prompt and efficient action taken by the United States attorney for the northern district of Ohio (Cleveland). When my complaint was filed with this officer, he proceeded with his duty, with the result that an indictment was quickly followed with arraignment and a conviction. In a second instance, the district attorney for the western district of North Carolina, acting upon my complaint, promptly caused an indictment to be handed up, and a warrant has been issued for the apprehension of the accused.

In the autumn of 1914 I was obliged to file a complaint of a similar nature (copyright violation), which violation was committed in Kansas. The United States attorney in that district (Topeka) gave prompt attention to the complaint and issued a subpoena for my appearance before the grand jury. While I was preparing to obey the summons, I received a telegram from the district attorney at Topeka, in which he canceled my appearance. It must be explained that in the three instances where I was subpoenaed such subpoenas were served upon me through the eastern district of New York (Brooklyn). In the case of the Kansas subpoena, a witness was subpoenaed through the southern district of New York. This New York witness, who desired to avoid the trip, called upon the district attorney at New York, and has informed me that he talked with H. Snowden Marshall, who made certain suggestions to the witness, and such suggestions were made for the purpose of aiding the witness to avoid the trip to Kansas.

The point I wish to make is this: When the Ohio and North Carolina subpoenas were served upon me, through the eastern district of New York—of which matters H. Snowden Marshall had no knowledge—prosecution was promptly begun and carried forward successfully, without interruption. But when one of the Kansas witnesses was subpoenaed through the southern district of New York, and H. Snowden Marshall was personally supplied with information regarding the complaint, and the complainant (the writer), the Kansas subpoenas were immediately canceled. Did he, H. Snowden Marshall, interfere in the administration of justice in Kansas?

The district attorney at Kansas has refused to proceed with the prosecution, through no lack of evidence, no lack of witnesses, with no obstacle in his path, and no explained reason for this refusal. The United States marshal at Topeka has refused to supply me with the names of the last Kansas grand jury. Two appeals from me to the Department of Justice at Washington have brought meaningless replies and no relief.

I want to say that in the case of every complaint I have gathered the evidence at my own expense, and a great deal of trouble, and have sought in every fair way to aid the prosecution to proceed in a lawful manner.

Since I am the complainant in Kansas, as I was in the southern district of New York, and the same dramatic composition is involved, again I ask that it be determined if H. Snowden Marshall and his superiors are back of the blockade in Kansas?

I may say that the conviction so promptly obtained in Ohio (in which the Government recovered the fine and costs without prosecution) and the indictment and prosecution now pending in North Carolina, were both secured on the identical compositions involved in the complaints I filed in the southern district of New York, which complaints H. Snowden Marshall has refused to prosecute.

H. Snowden Marshall appears to be conducting a public office as a private business; he has reserved unto himself the privilege of picking and choosing what statutes he will enforce, what defendants he will prosecute, and he unjustly and corruptly discriminates against citizens who are obliged to appeal to the law, through his office, all of which tends to bring the law into contempt, and reflects upon the intelligence and good faith of citizens and operates to their material loss and injury. I protest against his retention in office and I believe it is my duty to present this protest to his superiors, for such action as they may deem proper.

I repeat, the matters complained of call for, not only the investigation of H. Snowden Marshall, but also the Department of Justice, at Washington, which department has,

I charge, knowingly and willfully protected public officials in their incompetent, unscrupulous, and corrupt practices.

If you expect to be in New York and wish us to call upon you for the purpose of supplying further information, we will be pleased to keep any appointment you may find it convenient to arrange.

Respectfully,

MARIE DORAN.

JAMAICA, CITY OF NEW YORK.

STATE OF NEW YORK, *County of Queens.*

Marie Doran, being duly sworn, deposes and says:

I am a resident of the city of New York, town of Jamaica, County of Queens. I have carefully read and examined the matter attached to this affidavit, which matter contains specific charges made against H. Snowden Marshall, United States attorney for the southern district of New York. I present these charges with a full knowledge of their gravity, believing it is my duty to do so for the public welfare, and to the end that the law may be upheld and properly administered with equal justice to all. I further declare that, to the best of my knowledge and belief, each and every specific charge is true in every particular.

MARIE DORAN.

Sworn to before me this 3d day of January, 1916.

[SEAL.]

WM. NAGLE,

Notary Public, Queens County, New York.

CHARGES AGAINST H. SNOWDEN MARSHALL, UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK.

1. He knowingly and willfully neglected to perform his duty in the case of the United States against Earl D. Sipe, by failing to promptly arraign the defendant, who obtained release of bail before the arraignment, which was delayed nearly nine months, and did not occur until complaint had been filed with President Wilson.

2. He conspired with former Assistant Charles H. Griffiths to defeat justice by refusing to ask for an indictment in the case of the United States against William F. Burke, alias "Billy" Burke, Tremont Theater, New York City, said Burke having been arrested, and after examination held for the grand jury.

3. He conspired with Assistant Roger B. Wood to defeat justice by refusing to hear evidence, and by refusing to produce evidence available and within his jurisdiction, and he did this to prevent the indictment and prosecution for the crime of conspiracy and perjury, which crime, it was alleged, had been committed by Paul Scott, 1402 Broadway, New York City, and also the crime of perjury, which crime, it was alleged, had been committed by Jean Barrymore.

4. He refused to perform his duty by refusing to reopen the case of the United States against Paul Scott, 1402 Broadway, New York City, when additional evidence was submitted, and he refused to entertain a new complaint, accompanied by new evidence, of another violation of the law, thereby defeating the indictment and prosecution of Paul Scott, 1402 Broadway, for all of his several unlawful acts.

5. He planned and caused to have executed an imposition, designed to defeat justice, and he used the power of his high office with fraudulent intent, in the case of the reopening of the complaint of the United States against William F. Burke, alias "Billy" Burke, Tremont Theater, New York City, in that the investigation he ordered was commenced in bad faith, with malicious intent to defeat its purpose, and he used his official power with deceitful intent, his real purpose being to deceive, embarrass, and dishearten the complainant.

6. He conspired with Assistant Harold A. Content to impede justice by refusing to permit a witness to appear before the grand jury for the purpose of presenting evidence and testimony showing violation of the law.

7. He failed to inform witnesses summoned to appear that under provision of law such witnesses were entitled to fees and mileage, in consequence of which such witnesses failed to receive payments when due.

8. He has steadily refused to reply to, or take any notice of, letters addressed to him when such letters contained specific charges of improper and insulting conduct and language, employed by his subordinates, Roger B. Wood and Harold A. Content, while engaged in official business.

9. He has neglected and refused to administer the duties of his high office, and by so doing he has lessened respect for the law, aroused suspicion and mistrust in the

minds of citizens, defeated the ends of justice, permitted willful lawbreakers to escape punishment for their acts, and he has deprived the public treasury of substantial sums which could have been levied and collected in fines and costs in cases where indictments and convictions were easy to obtain.

10. He has incurred needless expense and has drawn heavily upon the of officers and citizens in various proceedings and so-called investigations, none of which were undertaken in good faith, but merely to deceive.

Sworn to before me this 3d day of January, 1916.

[SEAL.]

MARIE DORAN.

WM. NAGLE,

Notary Public, Queens County, N. Y.

Mr. GARD. Mr. Buchanan, do you know what these alleged violations of the copyright law were?

Mr. BUCHANAN. No; I can not state that. I can get that.

Mr. WILLIAMS. Who is Marie Doran?

Mr. BUCHANAN. Her letterhead shows what she is. She is interested in some copyright.

The CHAIRMAN. "Marie Doran, dramatist."

Mr. BUCHANAN. This is a legal matter, and I do not know what consideration the committee will want to give to it. I do not want to make anything public here that would reflect on any Member of Congress. It was not my intention, and I just had the letter read, thinking the committee would understand it better.

I hope to-day to be able to put sufficient information before this committee to justify them in asking for authority to summon witnesses, call for papers, etc. Cases, of course, can not be proved without that power. You must have evidence, and that is the reason I desired to have that resolution passed the other day. I will now turn the matter over to Mr. Hill, my attorney.

Before Mr. Hill proceeds I will state further that I have other information to be developed later that I am not prepared to give the committee.

STATEMENT OF HON. ROBERT P. HILL, A MEMBER OF CONGRESS FROM ILLINOIS.

Mr. HILL. Mr. Chairman, I have been looking somewhat into the question of this indictment brought against Mr. Buchanan and other people, but particularly Mr. Buchanan. I have done so at his request. Yesterday he asked me to come down and appear before the committee, if it would be satisfactory to you, and discuss the merits of some of these charges that he has made here in this impeachment proceeding. I am frank to say to you that until yesterday I had never read the impeachment charges, because up to that time he and I had never discussed that phase of the case. So, as a matter of fact, it was with only twelve or fourteen hours notice that I was requested to appear before you to-day.

Mr. BUCHANAN. I know, Mr. Hill, you do not want to make a wrong impression. I want to say that while I spoke to you over a week ago I did not tell you what I wanted you to assist me in doing.

Mr. HILL. That is very true. This is the first time this particular matter has been brought to my attention. Mr. Buchanan and I had discussed matters relating, of course, to this proposition but bearing more directly upon the indictment, a number of times since that indictment was brought, but I did not know I would be permitted to come before this committee, and, as a matter of fact, had no oppor-

tunity to go very carefully into the charges that are made here in this impeachment.

I have since that time, however, read them through carefully and endeavored in a way to classify or pick out the charges that in my mind, with the data that he has at hand, would be sufficient to warrant this committee in reporting out a resolution asking power to make thorough investigation. I am of the opinion that possibly there are charges here which are clearly not impeachable, charges that the committee would not care to discuss and take up time with, some charges that, possibly, are of a general nature, and that he probably could not get any evidence on, such as usually accompany most impeachment proceedings.

The first thing I want to discuss this morning and will call your attention to—and I do not know just what the attitude of this committee is going to be—is that feature of the impeachment——

Mr. GARD. Are you discussing the resolution of January 12, 1916, now?

Mr. HILL. I am looking at the last resolution.

The CHAIRMAN. The Congressional Record, page 1044, gives the charges.

Mr. GARD. That is the same thing, is it not

The CHAIRMAN. Oh, no. The resolution provides for the investigation.

Now, Mr. Hill, you may proceed.

Mr. HILL. I realize and this committee realizes that every charge of impeachment is a serious charge. I realize with equal force, and I think this committee realizes with equal force, that every impeachment that is brought against a person is a very serious affair. I was impressed with the discussion of the minority leader of the House upon the question of this indictment having been found since the first impeachment charges were brought by Mr. Buchanan. Now, I do not know every phase of how that indictment was brought, but want to call the attention of this committee to the contents of this indictment so far as it goes toward reciting a legal right for an indictment to be found.

Mr. NELSON. May I interrupt you right there? What one of the charges would cover that particular matter?

Mr. HILL. Well, the fifth, sixth, and seventh I have checked here as three that might very well be brought together to include a reference in the record to this indictment.

Mr. NELSON. You have some that specifically cover this matter?

Mr. HILL. Yes, sir. I will say this, that in the short time that I have had to look at this matter I have thought there might be a bare possibility that in discussing this in your executive sessions you may find that some other charge would a little more fully cover the matter that I have concluded should come under a certain charge; and if you do, I want to ask that you make the charge to suit which ever one of these numerous charges it may most properly fall under.

I have gone through these charges and prepared a pretty lengthy brief. I have been at work somewhat on this indictment, and I am of the opinion—and I believe that you gentlemen as lawyers, when you have once gone into the operations of the Sherman antitrust law, if you have not done so already, and what is necessary to constitute a conspiracy under that law and apply that to the indictment that

has been presented—will find that there is but one conclusion that this committee, or any jury, or any judge would ever arrive at, and that is that they have not presented a case warranting the indictment of any person for a violation of the Sherman Antitrust Act.

Mr. GARD. That would be a matter of demurrer to the indictment, would it not?

Mr. HILL. That, of course, is what will take place in the trial of the case.

Mr. TAGGART. Is the indictment long?

Mr. HILL. Yes, sir. I would like to read it, but I do not know whether you gentlemen would care to hear it.

Mr. MOSS. Did you reach that conclusion from the face of the indictment, or from what you know about the evidence?

Mr. HILL. I reached the conclusion, of course, from the face of the indictment. I have not heard the witnesses testify, but in the indictment they do not mention the time or the place that anything might have been done that is a violation of the law. I have gone over it carefully, and I have a brief here.

Mr. THOMAS. Is there any specific charge made in that indictment?

Mr. HILL. They go on and admit in that indictment that they do not know, that those things are unknown. It is an acquittal. I have never seen an indictment containing just what this contains returned with the hope that any court on earth would ever expect to get a verdict of guilty against the person so charged.

Mr. MOSS. Mr. Hill, the statement has been made several times that these impeachment charges were pending at the time the indictment was found. Is it a fact that prior to the finding of the indictment it was known and published in the newspapers that indictments were being considered, and that the matter was being fully investigated by the grand jury?

Mr. HILL. Yes, sir. I might say in that connection—I can not tell you just now who my informant was—

Mr. BUCHANAN. Will the gentleman let me answer that question, if the committee please? Those statements in the newspapers were made due to the fact that a number of representative labor men of Chicago were subpoenaed to appear before the grand jury in New York, and after they had appeared there the newspapers made erroneous statements that credited interviews to these same gentlemen. One of them, at least, was said to have been before the grand jury, when in fact he never was before the grand jury. If the committee desires, I have letters in my pockets now to prove the statement that I am making. One of them, credited with the most harmful interview, absolutely denies the whole thing.

I want to state how I got these statements. These men that were credited with making these statements had been my associates. They were men that I knew favorably. They were men that I did not believe would perjure themselves under any circumstances, and especially to injure me without any cause. I therefore wrote to some of my friends in Chicago about these erroneous statements in the papers, stating that I could not yet believe that those men would make statements reflecting on me when there was no truth in the statement, and asking them to go and inquire about it. After going to see them, one of them wrote a letter to me, and the other gentlemen that went and saw them. If that would help the committee in

any way, I am willing to put copies of those letters before the committee.

THE CHAIRMAN. Mr. Buchanan, anything you have in your possession, any information you have showing that you know of any specific offense committed by this district attorney would be competent.

MR. NELSON. I want to say that I think one of the most serious things here is the charge that you have been indicted because you acted officially. As far as I am concerned, as a Member of Congress, I am very much interested in that particular charge. We ought to protect the dignity and standing of the Members of Congress in the discharge of their official duties. I would like to see all the correspondence with reference to your indictment, but, of course, we will leave that entirely to you.

MR. BUCHANAN. If it will help the committee, I would like to read the original of this letter, and then leave a copy of it with the committee.

First, there is the statement of the secretary that he was going to put the books of the Labor's National Peace Council before the grand jury. My God! I have stated time and again that they can take all the books, they can take my correspondence, they can take anything that was ever in existence, and there is not a scintilla of evidence to justify these charges. I understand that Mr. Hill is talking about the charges contained in the indictment. I say those are absolutely untrue, and there is not a scintilla of evidence in existence to justify the charges.

MR. TAGGART. Do you say that no one went before the grand jury and swore to the statements?

MR. BUCHANAN. No. I say, after our friend here invites your attention to the fact that the newspapers said so-and-so, if you are not already awake to the fact that the newspapers are absolutely unreliable and that they are part of the scheme to get me in this campaign that they are making, why, he ought to get his eyes opened a little.

You understand, I was a member of Labor's National Peace Council a little more than a month, from June 22 until July 29, and every member of that Labor's National Peace Council was an active trades unionist. I think I have a list of the names of officers here. I never saw Lamar or heard of him during this time. I never heard there was such a fellow in existence as this German representative that you read about in the newspapers. But this is the man that the newspapers said was going to give damaging evidence against me in New York. He is the one that addresses the letter to me. It is dated Chicago, Ill., January 11, 1916, and it resulted in the inquiries that my friends made at my suggestion. [Reading:]

EXHIBIT No. 3, JANUARY 17, 1916.

[Commercial Portrait Artists' Union, 19 West Adams Street, Chicago, Ill.]

CHICAGO, ILL., *January 7, 1916.*

HON. FRANK BUCHANAN,
Washington, D. C.

MY DEAR BUCHANAN: In response to inquiries made by John J. Walt and George Fitzgerald relative to the authenticity of alleged newspaper interviews with me dealing with Labor's National Peace Council affairs, permit me to say, in the most emphatic manner possible, that the only statement I ever personally gave to the press was to the

effect that the explanatory pamphlet issued by the council, bearing our respective signatures, constituted all there was to be said on the subject, except that our subsequent actions were such that not one of the Chicago representatives of the council need fear the most rigid of investigation, or the most searching inquiry; that our office records were proof of our honesty, honor, and integrity, and that the future would prove the correctness of our views and the real patriotism and loyalty of those who preached peace and plenty, rather than merciless mass murder and misery.

What I know of your connection with Labor's National Peace Council will ever be a credit to you, and will but tend to increase the esteem and regard of all when the truth is eventually known.

Faternally, yours,

L. P. STRAUBE, *Business Manager.*

Mr. Moss. Mr. Buchanan, will you answer me a question?

Mr. BUCHANAN. Yes.

Mr. Moss. Is that letter dated prior to the impeachment charges, the first impeachment charges that were filed here in the House?

Mr. BUCHANAN. The letter is January 7. I don't remember—oh, yes; my first impeachment charges? It was after that. This is January 7, and the first impeachment charges were January 14, if my memory serves me.

Mr. WILLIAMS. Was this man a witness before the grand jury?

Mr. BUCHANAN. No, sir; he was one of those that the newspapers were headlining regarding the damaging information—that is, in Chicago—in regard to me.

Now, here is another one. I want to say in explanation of part of this letter that I understand this company there in Chicago that Pinaud is the president of—Charles H. Pinaud—I understand that after I retired he had some trouble collecting a printing bill, and the last paragraph in this letter makes it necessary for me to make that explanation. This is addressed to a friend of mine. I will say that they are old work mates of mine, both of them, and all of those kind of fellows are interesting themselves in regard to this matter in Chicago, and there is not much danger of anybody that knows me believing anything about these charges that have been in the newspapers. It is only parties that do not know me that might be led to believe them. [Reading:]

EXHIBIT NO. 4. JANUARY 17, 1916.

[The Bronson Canode Printing Company, Chas. H. Canode, Pres.]

1241 TO 1249 SOUTH STATE STREET,
Chicago, January 7, 1916.

Mr. GEORGE FITZGERALD,
808 West Van Buren Street, Chicago.

DEAR SIR: I am in receipt of your letter of January 6 relative to the interview in the Chicago Tribune recently, and in which article the reporter is purported to have quoted me. I wish to say the supposed interview is absolutely without foundation of fact. The article states that Mr. Buchanan said he would "spill the beans if Martin failed to pay my bill," which is absolutely false.

The article further states that I. J. Cundiff was hired to organize strikes, whereas I specifically stated that Mr. Cundiff was hired for the purpose of organizing local councils for Labor's National Peace Council.

Furthermore, it states that this supposed interview was practically what I testified to before the grand jury while in New York, while as a matter of fact I could not have made that statement for the reason that I did not testify before the grand jury in New York.

A day or two after the article appeared, the reporter responsible for it called up my office in my absence and asked my stenographer if I had made any comment on the article, and on my stenographer answering that she did not know, and that he

would have to talk to me about it, he then said he just wanted to know whether I had done any swearing after having read the article.

The comment which wound up this interview relative to Mr. Buchanan is all false. I never stated that to the reporter or anyone else and do not know why this statement should have been credited to me.

I called Mr. Kendall, the Tribune reporter, over the phone to-day and he said that statement about "spilling the beans" was all a mistake and that the other statements attributed to me were mistakes in the makeup of the paper and no opportunity was given him to correct it. This last statement from Mr. Kendall may be taken for what it is worth, but I want it understood that there is absolutely no basis for them attributing those statements to me.

On the other hand, if the persons responsible for the bills incurred by Labor's National Peace Council had kept their word and paid their bills, there would have been no occasion for anyone drawing me into this controversy.

Yours, very truly,

(Signed) CHARLES H. CANODE.

EXHIBIT No. 5, JANUARY 17, 1916.

[International Brotherhood of Blacksmiths and Helpers.]

CHICAGO, January 7, 1916.

Mr. JOHN J. WALT,
Chicago, Ill.

DEAR SIR AND BROTHER: The attached clipping, which appeared in the Chicago Tribune of December 29, 1915, is an interview credited as coming from me, and I desire to say that the article is a malicious falsehood and deny most emphatically as having made such statements to anyone.

Yours, fraternally,

(Signed) WM. F. KRAMER.

EXHIBIT No. 6, JANUARY 7, 1916.

[Chicago Tribune.]

DECEMBER 29, 1915.

PUTS BLAME ON OTHERS.

William F. Kramer, one of the vice presidents of Labor's National Peace Council, had the following to say:

"The gang went about the work and got away with it by pretending to be agents of Labor's National Peace Council. The labor peace council knew nothing about their acts, and had any of those fellows applied for membership it would have been denied.

"They sent telegrams signed 'K,' which asked for money. I was amazed at their cunning in seeking to mulct each other by using initials which would give the impression that I and my associates were lending our efforts to further their schemes.

"Congressman Buchanan was the first to promote the labor peace council. I would be much pleased to know that he is innocent. If those indicted men are guilty, then they deserve all that the law can give them."

Those are the bills that I spoke of that seemed to develop some controversy after I retired. I know nothing about it, and was in no way responsible for them.

These letters I had not intended to put before anybody. I am contemplating bringing suits against the newspapers, and of course we will have a trial before the courts, and I have been advised by a lawyer not to use them otherwise.

Mr. NELSON. Mr. Chairman, I do not believe we ought in any way to compromise his other suits.

The CHAIRMAN. Certainly not.

Mr. BUCHANAN. But I have already given them to you now.

Mr. NELSON. If you wish to withdraw them now I think you might do so.

Mr. BUCHANAN. As long as the question is raised and you gentlemen are acting here under the impression of newspaper reports, I want to say that I want to help throw the light on this thing.

Mr. GARD. As far as I am concerned, I would not be bound by any newspaper reports.

Mr. BUCHANAN. Well, if there is any man on this committee that wants to be guided by that kind of information, in my judgment he is not qualified to act as a member of the committee in this kind of a case.

Mr. MOSS. Mr. Chairman, I wish to say a word. This gentleman has seen fit, because I am not one of those who every time he opens his mouth gets up and bows, on one or two occasions to reflect on me. I wish to say this, that my sole object in calling attention to the newspaper reports was, inasmuch as the charge was made that Mr. Marshall had secured these indictments as a reprisal against Mr. Buchanan for preferring the charges of impeachment, I asked that question to show that prior to the bringing of the impeachment charges, the newspaper reports, which, of course, Mr. Buchanan could have seen, were to the effect that the district attorney of New York was investigating these very questions. That was my sole object.

I want to get at the light. He says he wants the light; I want the light, too. There will be no member of this committee that will more freely vote for an investigation of these charges against Mr. Marshall than I will if there is any solid foundation for them. I will say that right now. I am opposed, as far as Mr. Buchanan is concerned, or anybody else, to this committee being made the instrument of reprisal, or for us to start an investigation that would last months and involve great expense if there is not some solid foundation for it. The very minute that he brings before this committee in believing that there is something to these charges, I am in favor of going ahead with them.

Mr. BUCHANAN. Will the gentleman permit me to ask a question?

Mr. MOSS. Yes, sir; in just a minute. I think the gentleman is unjust when, every time I ask these questions for information, he imputes some unworthy motive. I think he was discourteous in the House the other day when he deliberately refused to yield me time as a member of this committee, although he had time to yield. Now, as I say, if there is a single, solitary, reasonable fact upon which to go ahead, I want to go ahead, and I will vote to go ahead. I want the committee to understand that.

Mr. BUCHANAN. Does the gentleman believe that a member of the committee who will make a statement that he does not believe there is any truth in the charges, or that there is no truth in the charges that a Member of Congress has put in the record, is in a position to pass fairly on the charges themselves? Does the gentleman feel that a man that will make those statements before any investigation is made in regard to the charges, that there is no truth in them, is fully capable of sitting and judging? In other words, if a juror had expressed himself that he did not believe anything in the charges before the court, would any court permit him to sit on the case?

Mr. MOSS. I deny making that statement, and I will ask you to bring proof that I made it.

Mr. BUCHANAN. I will have to look in the Congressional Record to get that. It practically says that.

Mr. MOSS. Are you referring—

Mr. BUCHANAN. The gentleman got all the courtesy he was entitled to from me.

Mr. MOSS. Are you referring to the statement I made in the House Mr. Buchanan?

Mr. BUCHANAN. Yes, sir.

Mr. MOSS. Very well; that is a matter of record. What I stated, as the members of the committee probably heard, or started to state, was that Mr. Buchanan had had two opportunities to bring evidence before the committee and had not done so, and that I was opposed to the committee entertaining indiscriminate charges in the absence of some substantial evidence, or words to that effect. That was my statement before the House.

Mr. BUCHANAN. I will say the gentleman's statement was such that if I had a trial before a jury you could not sit on it. I am usually pretty frank—

Mr. MOSS. I am equally frank.

Mr. BUCHANAN. That is one of my weaknesses and faults, I suppose.

The CHAIRMAN. Gentlemen, this discussion is now beyond the point in question.

Mr. MOSS. I think so, too, but I think the gentleman should not make these unnecessary reflections.

Mr. BUCHANAN. When I get time to put before the committee the Congressional Record and the statement of the gentleman there—I may put it before the House whether the gentleman is competent to sit in this case.

Mr. VOLSTEAD. I would like to ask some questions, Mr. Buchanan, if you please. In reference to this indictment, when you made these first charges in the House did you know at that time that your conduct was under investigation by Mr. Marshall?

Mr. BUCHANAN. Oh, I know—only what I saw in the newspapers.

Mr. VOLSTEAD. There had been some statements published to that effect?

Mr. BUCHANAN. There were statements in the newspapers accredited to Mr. Marshall.

Mr. VOLSTEAD. Had you prior to that time in any way reflected on Mr. Marshall so far as it was known publicly—published in any fashion?

Mr. BUCHANAN. Had I?

Mr. VOLSTEAD. Yes.

Mr. BUCHANAN. Not to my recollection. The newspapers do not usually publish my statements; I am not on their side. I did not believe what was published in the newspapers. I believe I did give out a statement to the papers, but I don't remember what it was. I guess it was after the indictment.

Mr. NELSON. Do you attribute your indictment directly to your official activities as a Member of Congress?

Mr. BUCHANAN. I attribute my indictment to my activities in opposition to one of the most vicious systems that was ever in existence, that attempts to make profit out of machines of death to shoot down the flower of the manhood of the world. I am so certain of it that I would be willing to stake my life that that force is behind this fight

against me and others; but to prove those charges and catch those rascals takes the power of the Congress, the highest power that there is in the country, because they have got everything else.

Mr. MORGAN. Mr. Buchanan, I understood you to say that you were a member of this organization, Labor's National Peace Council, for only a little over a month?

Mr. BUCHANAN. My memory does not always serve me well, but, as I remember, I became its president at the urgent request of some of my friends. The newspapers, of course, have said that I organized it. I retired the latter part of July; if my memory serves me right, my resignation was given about the 29th of July.

Mr. MORGAN. And then you ceased to be a member of the organization?

Mr. BUCHANAN. Oh, yes.

Mr. MORGAN. It occurred to me to ask whether you ceased to have any connection with them. You say you resigned?

Mr. BUCHANAN. Well, I differed with my associates on it. They held a meeting here in Washington. If it is of any interest to you gentlemen, I will say that Labor's National Peace Council was started to crystallize a sentiment in favor of peace and against this country becoming involved in the European conflict. At that time we were somewhat concerned that we might become involved, and we were under the impression that the President was standing for peace and that there was another influence trying to force us into it. And I know that the people of this country do not want war.

I am one of the few members whose election, you might say, took the hammer out of my hand, for when I was elected I was driving rivets. And I still associate with the working people, and I believe I know the sentiment of the people of this country as much as any one. I have talked with labor unions, business men, and farmers, and I am positively certain that the people of this country do not want to become involved in war. There is no use discussing that here.

I started to tell you what this council was organized for. It was for the purpose of securing representatives from each central body in the different cities for the purpose of meeting the President and having them give an expression as to the sentiment of the people they represented. He had stated that he wanted his finger on the pulse of the people, and I wanted him to know what the pulse of the people was by this method. Now, he refused to meet us. That is what I am coming to now.

Mr. NELSON. Proceed, Mr. Buchanan.

Mr. BUCHANAN. He refused to meet this committee that I was led to think he would meet. Then after he refused to meet us, my associates, who, with their executive board had authority to do this. Over my protest, they had a meeting here in Washington, I think about the latter part of July. As I stated to them, it was too much like a dog barking at the moon. I could not see that anything would be accomplished by it. I would not concur in it and would not take part in it. Naturally, when I would not take part in anything that my associates did, under the circumstances there was nothing left for me to do but resign.

Mr. VOLSTEAD. Have you the literature that was circulated by that Peace Council?

Mr. BUCHANAN. Yes.

Mr. VOLSTEAD. Have you any objection to putting that in the record?

Mr. BUCHANAN. I think I have it in my office; I am not exactly certain.

Mr. MORGAN. As I understand you, your association seemed to be going along certain lines that you did not approve of, or you did not agree with them?

Mr. BUCHANAN. That is it. I did not agree with them, and I would not pursue that. I have a letter here that I wrote to friends of mine in Kansas City, bearing out my statement in regard to that, if I can find it.

Mr. VOLSTEAD. If you will allow Mr. Hill to proceed, probably we can get along a little faster.

Mr. BUCHANAN. You do not care for that? I will do whatever is the pleasure of the committee. I thought I had a letter here in regard to that.

My difference with them was so great—not that I was not continuing to work for the same cause that we had organized this council for, but in regard to the methods.

The CHAIRMAN. Had you any information, outside of newspaper reports, prior to December 14, that your conduct along with that of Mr. Fowler and Mr. Monnett and others who were identified with you was being investigated by the Department of Justice?

Mr. BUCHANAN. No, I never heard of such a thing; in fact, I never dreamed of such a thing. We never discussed the question of strikes. The question of strikes and interfering with commerce was never considered.

The CHAIRMAN. That was not the question I asked.

Mr. BUCHANAN. I know; I just said that.

The CHAIRMAN. When was the first time you heard of the newspaper statement?

Mr. BUCHANAN. I don't remember. I suppose the record in the newspapers would show that.

Mr. TAGGART. Was there any strike in the southern district of New York in any munition plant?

Mr. BUCHANAN. I think there was. I read in the newspapers about it some time last year.

Mr. TAGGART. Do you know who organized that, if anybody?

Mr. BUCHANAN. I know there was a fellow by the name of Johnson, one of the executive board of my organization—the structural iron workers—that was active in it; I know that by the newspapers.

Mr. TAGGART. What was the result of it?

Mr. BUCHANAN. I don't know.

Mr. TAGGART. Did it go on, or did it terminate? Did it last long?

Mr. BUCHANAN. The reason I have this in mind is that this strike was on there, and there was something in the newspapers about German money or German influence having to do with it, and Mr. Gompers went over there and made some statements in regard to it, and some of the fellows that were representing the unions that were on strike had some controversy about it, but just what it was I don't know. As I remember in reading the newspapers, the eight-hour day was involved in it.

Mr. TAGGART. Was there more than one strike that you know of?

Mr. BUCHANAN. I don't know.

Mr. TAGGART. Are you charged in that indictment—in the absence of the indictment I ought not to ask you—with bringing about that strike, or conspiring to bring it about?

Mr. BUCHANAN. That is what we are charged with.

Mr. TAGGART. That strike?

Mr. BUCHANAN. No; not that strike. We are charged with conspiring to cause strikes; not any particular strike.

Mr. TAGGART. Outside of that district, or in it?

Mr. BUCHANAN. The charges are very indefinite. It does not point to any firm, corporation, or individual that had their business obstructed, or their commerce; that is, their manufactured commodities that were in commerce. It was very indefinite. The indictment will show that for itself.

I never talked with the gentlemen that were in a position to call strikes. I would not think of doing such a thing. I would discredit myself before my best friends in the trades-union movement if I would go to them and talk to them about striking, not being connected with them in their organization. It is the most ridiculous charge any one can make against me.

The CHAIRMAN. Now, Mr. Hill, you can read the indictment, if you have it here.

Mr. DANFORTH. What is this, Mr. Hill?

Mr. HILL. This is the indictment; that is, the body, or the charging part. There is some little things in the other part of it that probably I have not got here. [Reading:]

EXHIBIT No. 7, JANUARY 17, 1916.

Copy of indictment.

DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK.

At a stated term of the District Court of the United States of America for the Southern District of New York begun and held in the city and county of New York within and for the district aforesaid on the first Tuesday of September, in the year of our Lord one thousand nine hundred and fifteen, and continued by orders of the said court, dated, respectively, the second day of October, one thousand nine hundred and fifteen, the twenty-eighth day of October, one thousand nine hundred and fifteen, and the first day of December, one thousand nine hundred and fifteen, and by adjournment to and including the 28th day of December, one thousand nine hundred and fifteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors of the United States of America within and for the district aforesaid, on their oath present, that heretofore, to wit, during the year nineteen hundred and fifteen, and for some time prior thereto, and up to and including the date of the filing of this indictment, a large number of individuals, copartnerships and corporations, hereinafter called "manufacturers" were engaged in various States in the United States in the producing and manufacture of munitions of war, and of military and naval stores, and of rifles, cannon, and other weapons of war and parts thereof and appliances used in connection therewith, shells, cartridges, projectiles, gunpowder, and other explosives and other ammunition, parts thereof, materials used in the manufacture of and appliances used in connection therewith, locomotives, cars, automobiles, aeroplanes, and other vehicles of transportation, parts thereof and appliances used in connection therewith, building and railroad materials and other articles of many kinds, all of which were of a character adapted for use in war on land or at sea; that the said manufacturers so produced and manufactured said articles for the sole purpose of immediate sale and shipment in trade and commerce with Great Britain, France, Russia, Italy, and other foreign nations; that the said manu-

facturers were engaged in the business of delivering and shipping said articles to persons, partnerships, corporations, and organized bodies of men from the State in which they were so produced or manufactured to and through the port of New York and other ports of the United States and thence to said foreign countries; and that divers persons, partnerships, corporations, and organized bodies of men other than said manufacturers were also engaged in so delivering, shipping, and transporting such articles from States of the United States to said foreign countries, that the said manufacturers and other persons, partnerships, corporations, and organized bodies of men so engaged in foreign trade and commerce as aforesaid employed large numbers of men both in the producing and manufacture of said articles and in the selling, shipping, and transporting of them in the aforesaid foreign trade and commerce and said articles were continuously moved in said foreign trade and commerce; that the said articles when it was necessary or convenient so to do in order to bring them to a suitable port for shipment were continuously moved from one State of the United States to other States; that all of the names and localities of said manufacturers and said other parties so engaged in foreign trade and commerce as aforesaid and the times, amounts, and routes of such shipments and transportation are not known to the grand jurors aforesaid and are so numerous as to preclude their enumeration in this indictment.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the first day of May, in the year one thousand nine hundred and fifteen, and continuously thereafter until and including the date of the filing of this indictment, Franz Rintelen, alias Fred Hansen, alias Miller, alias Muller, alias Edward V. Gasche, alias Edward V. Gates; David Lamar, alias Lanauer, alias David H. Lewis; Frank Buchanan, Jacob C. Taylor, H. Robert Fowler, Frank S. Monnett, Herman Schulteis, and Henry B. Martin, hereinafter called the "defendants," and divers other persons whose names are to the grand jurors unknown, each of whom well knew the facts as to said foreign commerce hereinbefore stated and alleged, at and within the said Southern District of New York, and within the jurisdiction of this court, unlawfully did knowingly and willfully engage in a conspiracy to restrain the aforesaid foreign trade and commerce and to restrain, hinder, and prevent the transportation of said articles in said foreign trade and commerce so far as, and at such times, places, and as to such of said articles and in such ways as they might thereafter be able so to do, and to restrain, prevent, and hinder the producing or manufacture of said articles for the sole purpose of restraining, preventing, and hindering the shipment and transporting in foreign trade and commerce of such of said articles and in such ways, and at such times and places as they might be able so to do; that the purpose and object of said conspiracy was not confined to any particular articles, times, places, ways, and means, but the said defendants conspired and intended at any time or place, and by any ways or means (some of which were not definitely determined upon by said defendants) to restrain, prevent, and hinder such shipments in foreign trade and commerce; and the particular articles, times, places, ways, and means, determined upon by said defendants are not known to the grand jurors aforesaid; that among the divers means and methods by which the objects of said conspiracy were intended by defendants to be accomplished were the following:

1. Instigating and causing strikes and walkouts among the workmen employed at the plants and factories of the aforesaid manufacturers so as to prevent and hinder the aforesaid manufacturers, and thereby to restrain the shipping and transportation of said articles in said foreign trade and commerce.

2. Instigating and causing strikes and walkouts among workmen and employees of said persons, partnerships, corporations, and organized bodies of men other than said manufacturers engaged in foreign trade and commerce as aforesaid, employed in the shipping and transporting of said articles so as to restrain the said shipping and transporting thereof in said foreign trade and commerce.

3. Inducing by solicitation, persuasion and exhortation, and by the preparation, sending, mailing, and distribution of circulars, pamphlets, letters, telegrams, newspaper articles and other printed and written matter, the aforesaid workmen to quit the employment of the aforesaid manufacturers and thereby to restrain, hinder, and prevent in whole or in part the operation of said plants for the purpose of restraining the shipment and transportation of said articles in said foreign trade and commerce.

4. Inducing by solicitation, persuasion and exhortation, and by preparation, sending, mailing, and distribution of circulars, pamphlets, letters, telegrams, newspaper articles, and other printed and written matter, the aforesaid workmen to leave the employ of aforesaid persons, partnerships, corporations, and organized bodies of men other than the said manufacturers, engaged in said foreign trade and commerce as aforesaid, for the purpose of restraining, hindering, and preventing in whole or in part

the shipping and transporting of said articles in the aforesaid foreign trade and commerce.

5. Bribing and distributing money among divers officers and persons in charge and control of various labor organizations who induced the said officers and persons in charge and control of said labor organizations to cause the members of said organization who were or might be employed by the said manufacturers or by the said other persons, partnerships, corporations, and organized bodies of men engaged in foreign trade and commerce as aforesaid to leave their employment and to bring about strikes and walkouts among the said members of the said labor organizations and thereby to restrain, prevent, and hinder in whole or in part the producing and manufacture and the expected shipment and transporting in said foreign trade and commerce of said articles.

6. By divers other means and methods not specifically determined upon by said defendants, but to be decided upon by them as occasion might arise, all calculated in furtherance of and to effectuate the object of said conspiracy.

And so the grand jurors aforesaid, upon their oath aforesaid, do say and present that the said defendants: Franz Rintelen, alias Fred Hansen, alias Miller, alias Muller, alias Edward V. Gasche, alias Edward V. Gates; David Lamar, alias Lanauer, alias David H. Lewis; Frank Buchanan; Jacob C. Taylor; H. Robert Fowler; Frank S. Monnett; Herman Schulteis; and Henry B. Martin, and said divers other persons whose names are to the grand jurors unknown on the said first day of May, in the year one thousand nine hundred and fifteen, and continuously thereafter to and including the date of the filing of said indictment, at and within the Southern District of New York and within the jurisdiction of this court, in the manner and form aforesaid set forth, unlawfully did knowingly and wilfully engage in a conspiracy in restraint of the aforesaid trade and commerce with the aforesaid foreign nations; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Act of July 2, 1890, 26 Stat. 209.)

H. SNOWDEN MARSHALL,
United States Attorney.

There has never been one of the aforesaid manufacturers set out. They have never named an article of a single manufacturing plant in this country that has been hindered.

Mr. NELSON. They are so numerous that they can not name a single one?

Mr. HILL. They are so numerous that they can not find one of them. And they say in this indictment that they do not know any of those things.

Mr. TAGGART. Did I hear it aright that that included naval stores, and that they did not know what proportion of naval supplies was included in it?

Mr. HILL. I do not remember that right now, but I may come to that before I get through.

Mr. TAGGART. Would that include guns for vessels?

Mr. HILL. I suppose it would; all sorts of munitions of every character and kind.

Mr. TAGGART. My recollection is a little hazy, but is it not a crime to furnish guns to foreign navies under the present laws?

Mr. HILL. That is my impression of the laws, yes; but I am not going to discuss that feature.

Mr. TAGGART. Of course, I do not want to discuss the indictment.

Mr. HILL. The specifications they set up, after admitting they know nothing about it and can not name one single person that Mr. Buchanan or any other person ever attempted to hinder or interfere with. If you gentlemen are familiar with the commerce decisions that have been handed down by our Supreme Court relating to violations of the antitrust laws, you know they hold that where there is a conspiracy on the part of any individual, corporation, firm or set

of individuals to injure another person engaged in business, to the extent that it comes within a violation of the Sherman antitrust law, it must show—and I think this has been conclusively held in numerous cases; I know it has been in the Tobacco case and the Oil case—that unless these conspirators control a certain per cent of the output it is not a conspiracy that comes within the violation of the antitrust law.

Mr. VOLSTEAD. I do not think that would apply in this case.

Mr. HILL. There is a bare possibility that it would not, but they are not saying that they were ever stopped. They are not making an indictment that is specific enough so that Mr. Buchanan knows what he is charged with.

Mr. CARAWAY. In cases of that kind is it the practice of that court to issue a bill of particulars?

Mr. HILL. They have that right; yes, sir.

Mr. CARAWAY. Would that cure the defects in the indictment?

Mr. HILL. Of course, that will be exactly our procedure when we come up for trial in the court. That I have not yet secured, but I think possibly I will have it in a short time. It has been requested.

Mr. IGOE. I suggest that you just read the indictment and not comment on it.

Mr. HILL. Having read so far now, I will finish the balance of it.
[Reading:]

The CHAIRMAN. Now, Mr. Hill, we are discussing these charges:

I charge him with being guilty of oppression in corruptly procuring indictments from the grand jury in said district charging reputable citizens with crime, although there was no evidence before the grand jury which would in the least warrant such charges.

I charge him with corruptly conspiring with other persons to spread broadcast throughout the United States maliciously false newspaper publication and reports, emanating as official statements and purporting to describe results of investigations conducted by said United States attorney and his assistants, with the object of destroying friendly relations between the United States and one or more foreign governments.

I charge him with unlawfully and feloniously abusing the legal process before the grand jury in said district of New York, the secret service, and the Bureau of Investigation and Inquiry of the Department of Justice in furtherance of such conspiracy aforesaid.

Now give us, if you can, any information you have in your possession bearing on those three charges. Have you any newspaper articles which would throw some light on that seventh charge?

Mr. HILL. I have not that newspaper charge with me, but I will get it. I have it somewhere, but I really had not intended to discuss the newspaper charge.

The CHAIRMAN. You say that is one of the charges?

Mr. HILL. Yes; that is one of the charges. Mr. Buchanan may have that.

Mr. BUCHANAN. The newspaper charge is easily produced, and there are some witnesses here from New York. They are waiting here, and perhaps they will verify a part of that.

Mr. HILL. The newspaper charges that were made, as I remember it, were in the form of an interview given out by H. Snowden Marshall some time before any indictment was brought, in which he stated that a number of people were going to be indicted. As I remember now it referred to Mr. Buchanan, or at least to a Member of Congress and former president of the council, and in the article I think they mentioned the name of Mr. Bryan, because he made a speech there at

Madison Square Garden. Of course, that never materialized, but I saw that in one of the articles. This was an interview coming directly from the district attorney's office a great many days before there was any indictment filed.

The CHAIRMAN. Do you know how long before?

Mr. HILL. A few days; four or five or six days; maybe longer than that.

Mr. BUCHANAN. Before this indictment.

Mr. HILL. As I remember it was two or three weeks, but several days, anyway.

Mr. BUCHANAN. At the time I speak of these Chicago associates of mine went over to New York, and about that time the grand jury adjourned, or took a recess, and there was no indictment. I do not remember the time exactly.

They only put one of these Chicago fellows before the grand jury, because the others did not have any information of any value. Then later, sometime in January—it must have been more than two weeks before this—this statement came out in regard to this charge.

Mr. HILL. I remember reading in one of the Chicago papers a purported interview with one of these gentlemen that Mr. Buchanan read a letter from a minute ago, in which he testified about some of the expenses of this Labor's Peace Council, and that because there was a little bill of printing for their various advertising, for their by-laws, regulations, and letterheads—that because there was a portion of that that was not paid, he was “going to spill the beans.” That was put in quotation marks. You have heard his letter stating it was absolutely false. That was given as testimony before this grand jury. The man who was reported to have given that testimony did not testify at all before the grand jury.

Also, that man I remember the Washington newspapers here had big headlines about him, reporting what his testimony had been, when, as a matter of fact, he never testified at all. Those articles can be presented to you, and they will be.

The CHAIRMAN. Let me read this specific charge:

I charge him with corruptly conspiring with other persons to spread broadcast throughout the United States maliciously false newspaper publications and reports, emanating as official statements, and purporting to describe results of investigations conducted by said United States attorney and his assistants, and with the object of destroying friendly relations between the United States and one or more foreign Governments.

Is that a complaint reflecting on Mr. Buchanan, or is it for the purpose of showing that he was trying to destroy friendly relations between the United States and foreign Governments?

Mr. HILL. I must admit I do not know why that charge was placed here. The only thing I know that I thought would appeal to this committee was the authorized newspaper quotations of Mr. Snowden Marshall some week or 10 days before there was anything about what the testimony would be about this indictment. That is contrary to every good rule of law, that an attorney, the prosecutor, should give out evidence. You know those things work up sentiment and create sentiment against men that may be charged with offenses.

The CHAIRMAN. Will you furnish the committee with a copy of these newspaper articles?

Mr. HILL. Yes, sir; I will do that. We have them somewhere. I did not intend really to discuss that this morning.

Mr. IOOE. As I understood Mr. Hill in his opening statement, there were certain of these charges that he, representing Mr. Buchanan, was convinced were not impeachable and which he felt should not be considered. May I ask what charges he consents to eliminate from this discussion, if the committee feels that some of them should be? That would narrow the thing down.

The CHAIRMAN. There is no objection at all, of course.

Mr. HILL. In reply to that, I will say that I am not quite ready to ask you to eliminate anything. You have that power under the resolution that has been referred to you anyhow; and it is quite likely that you, as a big jury, would determine these things better than I could, representing one of the men who is interested in this matter. I might look at it from his side more unfairly than the committee would. I would really much rather you would do that. What I meant when I made that statement was that I did not intend to attempt to discuss any charge that in my mind might be doubtful whether it really constituted an impeachable charge. I only wanted to confine it to something that I thought did contain that character of charge.

The CHAIRMAN. Let me make this suggestion, Mr. Hill, that immediately after recess you take up this charge 6, wherein Mr. Buchanan says, "I charge him with being guilty of oppression in corruptly procuring indictments from the grand jury in said district charging reputable citizens with crime, although there was no evidence before the grand jury which would in the least warrant such charges."

Mr. HILL. I will take up that and the two preceding it.

Mr. BUCHANAN. Mr. Chairman, here is the position we are in. There are some of those charges that I will be able to get information on later that I could not have to-day. I have two witnesses from New York that want to get through to-day and return, and after Mr. Hill completes his statement I would like for you to hear those two witnesses from New York.

The CHAIRMAN. I suppose that will be agreeable to the committee, Mr. Buchanan.

(A recess was thereupon taken until 2 o'clock p. m.)

AFTER RECESS.

The CHAIRMAN. There is a quorum present. Mr. Hill, when we adjourned for recess you were speaking on charges 4 and 5, I believe, with reference to securing an indictment against Buchanan and others.

Mr. HILL. Yes, sir.

The CHAIRMAN. Now, will you proceed, sir.

Mr. HILL. Now, upon that question, the discussion ran a little more widely—it took a wider latitude—than I expected, and more time. I have a little paper here that I think covers about all I care to say there with reference to directing you gentlemen as to the only means of securing the information there that I think you are entitled to. I can either read that or point it out this way that I have been doing. I prefer to make my statement first.

The CHAIRMAN. Are you referring to charge No. 4.

Mr. HILL. Well, these three charges here are coupled together.

Mr. THOMAS. Nos. 4, 5, and 6?

Mr. HILL. Nos. 5, 6, and 7. There are three charges. It runs down to the word "newspaper." Now, these indictments cover about six typewritten pages. This indictment states no facts. These sheets state no facts at all. They can not recite or detail to you or to him, who is to be put on trial and on what if any specific charge. There is no specific charge recited against him. He has, so far, no means of knowing anything about what he is going to be charged with specifically. They can not and do not name, and they say they do not know the manufacturing plants, firms, corporations, or individuals which have been hindered. They do not know of any strike that has been caused by this labor organization with which Mr. Buchanan is connected, and yet they swear to an indictment of a conspiracy of these gentlemen who were indicted, and others after they have recited there that they know nothing about it. There is just one way for the committee to get at the facts, and that is to get a list of the grand jurors before which this investigation or indictment—before which the evidence was taken, and you have the power—Congress has plenary power—to ask those gentlemen down here. You have the right to ask for a bill of particulars setting forth the witnesses who testified before the grand jury. That can only be secured from the district attorney of the southern district of New York.

Mr. CARLIN. Your statement announces, as I understand it, that this indictment does not charge an offense?

Mr. HILL. It does not charge an offense; no, sir.

Mr. CARLIN. Has there been a demurrer filed to the indictment?

Mr. HILL. There will be. That will come up on the trial, but I think when the high prerogative of a Member of the House of Congress, the greatest legislative body, I think, in the world, has been attacked, and there is a reasonable doubt in the minds of the Members of Congress and of the committee, clothed with the authority—and the Judiciary Committee of our National Congress has that power—that these indictments might be wrongfully wrung from a grand jury after months and months of hearings, when they were in secret sessions, absolutely under the control of one man, the district attorney; that this indictment was brought after the time when one man's name, who was mentioned in a newspaper report or editorial long before any indictment proceedings had begun, had begun impeachment proceedings in Congress, it does seem to me that this body ought to have that degree of jealousy of its own rights, to say that a man ought not to be attacked at the whim or desire of some man over in New York, taking him away from his constituency and his official duties when he has done nothing except exercise a right that every one of you have thrown about you in your official capacity as Members of this Congress.

Mr. TAGGART. Do you wish to urge this is calling Mr. Buchanan to account in another place for what he said on the floor of the House?

Mr. HILL. That is it exactly. If you want to discuss these features of these charges, coupled together, you want to know something about why this indictment was brought against this man, your colleague. You can only get it by receiving the data and the information that was brought before this grand jury. Congress has that power. I have not the case in hand right now, but will supply it, wherein a judicial investigation of a judge, who was being tried for impeach-

ment—the grand jury in his court were summoned before the legislative investigation committee and testified.

Now, if they have that right in the case of an impeachment brought against a judge, there is not any question of doubt but what they have that right for the purpose of ascertaining evidence on impeachment charges against an inferior officer to a judge, to wit, a district attorney.

Mr. THOMAS. Would they have the right to disclose evidence which was brought before them?

Mr. HILL. If they did not, they would certainly have the right to come to this committee and testify as to the conduct of the district attorney in procuring that evidence—in procuring that indictment. I am of the opinion—and I think I can bring the case to support it—that they would have the right to give you, in this proceeding, this evidence that was brought out in this hearing there, because this is a branch of the Government that has powers beyond the powers even delegated to a judicial branch of the Government. I think there is no question of doubt about it. If any of you have any doubt about it, after investigation, I will be glad to have you call my attention to it, and in the meantime I will be glad to give you a case where it has been done.

Mr. CARAWAY. Suppose the men who testified before the grand jury which returned the indictment against these men, when the matter came to trial those men appeared at the trial and testified just to the contrary, could not the grand jury be brought in to impeach him? That is a case where they have testified before the grand jury.

The CHAIRMAN. The courts have held that it could be done.

Mr. THOMAS. But they are under oath not to disclose facts testified to before them.

Mr. CARAWAY. Is it not a principle of law that no facts should be hidden from Congress?

Mr. HILL. I think so. I have run down a case where an impeachment of a judge was brought and the grand jurors were allowed to testify.

Mr. MOSS. They were probably not required to testify to anything said in the grand jury, except the way they were charged in open court.

Mr. HILL. I have only a reference to it and I have been in the case only a short time, but I will get that case for you.

The CHAIRMAN. In order to expedite this preliminary hearing, if we can, I will ask you this question: Is it not really a fact that all you desire is that this committee and Congress should investigate these two charges which you have coupled together here, which relate to Mr. Buchanan personally?

Mr. HILL. Yes, sir.

The CHAIRMAN. That is the gist of the whole thing, is it not?

Mr. HILL. Up to date that is the gist of the argument presented.

The CHAIRMAN. Well, for the purposes of the committee to-day, we can dismiss everything else except that feature.

Mr. HILL. Well, I am going to take up another feature or two before I close. I spoke to this part of it all the forenoon we were in session, but there was another matter I want to call to the attention of the committee later. It seems to me that the only way you can get that—I urge the committee to request a bill of particulars from

the district attorney's office—is to have whatever might have transpired there in the way of notes and other things, which were done and said, and I think, without a question of doubt, this committee is not exceeding its authority. If I refer you to the witnesses who testified before the grand jury which brought the indictment, that would not interfere with anybody's rights, because you would have the right to hear them to determine whether this was a just and valid indictment as a strict legal proposition. I doubt if there is any right for the indictment—

Mr. WILLIAMS. Before I could favor subpoenaing members of the grand jury to disclose what occurred in the grand jury room, especially disclose testimony there, I would want you to brief the authorities on that point, and I would have to be convinced by the authorities that they could be compelled to testify.

Mr. HILL. I have tried to preface my statement with the statement that I wanted to give you a little further information or reference on that before I would urge that part of it, but I have made the statement that from my investigation I believe you have that right if you so determine. However, I undoubtedly think you have the right to ask for a bill of particulars.

Mr. MOSS. On what theory could we ask for a bill of particulars?

Mr. WILLIAMS. You mean in support of a motion to quash on the trial of the case?

Mr. HILL. I am urging this section of the case—

The CHAIRMAN. You said, as representing Mr. Buchanan, that in these charges 5 and 6 Mr. Buchanan charges he corruptly induced and procured grand juries to return, in the district court for the southern district of New York, indictments against Mr. Buchanan and other men.

Mr. HILL. He does not say that. He was a little timid about that, and left that out. He said "reputable citizens."

Mr. BUCHANAN. It is not alone my indictment. If you investigate you will find that there are other cases.

The CHAIRMAN. That is all I wanted, as chairman of the committee, to ask Mr. Hill or Mr. Buchanan—to particularize in which cases the indictments were procured. That is getting down to at least that much particularity.

Mr. DANFORTH. Are there any other indictments charged to be corruptly procured?

Mr. HILL. I do not know about that, but the charge makes it general.

Mr. DANFORTH. What we want to know is whether there are any others.

Mr. HILL. I do not know. I have made an investigation, but I have no evidence at my hand, to say that there is a single other indictment.

The CHAIRMAN. Have you, Mr. Buchanan?

Mr. BUCHANAN. I can get the witnesses before the committee if we can get rid of this feature.

Mr. HILL. That will be taken up shortly. Now, gentlemen, you have said, "Why don't we get that?" We could not get it. It has been asked for. We think we will have a chance to get it before the committee within a few days, because I have an idea when the hearing is had before the commissioner here in a few days it will be heard

there. But that is another case. That grew out of the same grand jury proceedings.

Mr. CARAWAY. Are the names of the witnesses known?

Mr. HILL. No, sir. That certainly derives us of the legal rights which are guaranteed Mr. Buchanan.

Mr. CARAWAY. That is governed a great deal by the State practice. For instance, in Missouri they do not have to indorse anybody and in Kansas they do.

Mr. HILL. In Illinois they do.

Mr. DANFORTH. I understood you to say you had a legal right to know the names of the witnesses.

Mr. HILL. I think so.

Mr. DANFORTH. Under what law?

Mr. HILL. Unless we are foreclosed on account of the practice covering that particular State.

Mr. DANFORTH. That is where the indictment would be tried.

Mr. HILL. Yes, sir; but we do have in that State a right for a bill of particulars. That has been asked for, but not received.

Mr. DANFORTH. Has it been refused? Has the bill of particulars been refused?

Mr. HILL. I have not heard from it. It has not been refused. No reply has been received. It ought to be here now.

Mr. DANFORTH. In connection with that, as I understand it, you say the indictment does not charge an offense?

Mr. HILL. Of course that is my own statement of it.

Mr. DANFORTH. That is your judgment?

Mr. HILL. Yes, sir.

Mr. DANFORTH. That, of course, could be decided on the argument of the demurrer?

Mr. HILL. Yes, sir.

Mr. DANFORTH. Now, you have that right, or Mr. Buchanan has that right, to interpose a demurrer.

Mr. HILL. Yes, sir.

Mr. DANFORTH. Has it been interposed?

Mr. HILL. No, sir; because he was given until the 20th of this month to make any pleading he may choose.

Mr. DANFORTH. Now, if before the 20th, a demurrer is interposed on his behalf, you can bring it on for argument very shortly?

Mr. HILL. I take it I can. Of course the disposition of that hearing in the courts can be continued indefinitely. It may be six months or a year, because you know as well as I do, and everyone else, the slowness of the courts in a big State. It may come up immediately or within six months, and we would not have the decision of the courts on that proposition for possibly many months.

Mr. DANFORTH. It will be decided before Mr. Buchanan is tried.

Mr. HILL. It must be decided before he is tried; yes, sir. You can see the possibility of not getting any benefit of that from this committee, for the reason that the trial judge before whom this demurrer will be pending may decide that there is a legal cause stated in the indictment. Well, if the counsel of Mr. Buchanan concludes that he is in error in that decision, he may appeal it and it may be two years in court before anybody may know definitely what the courts say about the legality of that indictment or the merits of the demurrer.

Mr. DANFORTH. As to these particular charges you, or Mr. Buchanan, asked the committee to substitute its action for the regular court proceedings for bringing about a determination of the merits of the indictment.

Mr. HILL. No; I did not mean that, and I tried to make that clear.

Mr. DANFORTH. That is why I asked the question.

Mr. HILL. I am glad you mentioned that. I did not intend to speak about the legality of the indictment for that purpose. The only purpose I had in that was to get to this committee the contention of ours that the manner in which this indictment was procured in New York, under the circumstances, would entitle this defendant, being a Member of Congress, to an investigation by this committee of the procedure as to whether the attorney was regular in procuring this indictment, it following immediately upon the heels of impeachment charges he had brought against this particular man, and knowing as we do the great power of a man as a district attorney in a city like New York, where secret sessions are held, and especially basing that conclusion upon the fact that they can not charge one single thing ever done wrong, we can only conclude that maybe they intended some time to do something wrong and charge it to the labor organization which has been exempted by legislation recently from the operation of the Sherman antitrust law, which would exempt any labor organization, and I feel that when an indictment is brought against a member of Congress, under a Federal statute, with all of these things thrown about it, that a committee like this ought to feel that they have some right to make that investigation for the protection of themselves.

Now, just to illustrate: Ninety per cent or more of all the conspiracy charges that are brought in this country are brought in the city of New York. It has got to be a great system of law practice down there. Very little of it is heard anywhere else, and as for that matter, they may have a municipal law regulating the conduct of a person on the streets; for instance, as to spitting on a street, and two of us may be walking along down the street talking, and one of us may spit on the street, and instead of availing themselves of the law of the city or town to impose a penalty of \$5 or \$10, they can say that the two of us were walking along the streets and conspired to violate the law and that this act of spitting was the result of the conspiracy, and they can indict us for conspiracy. I think you will find from an investigation of this that conspiracies have been trumped up on just as little grounds as that, for the purpose of causing more trouble and imposing bigger fines and greater expense to men. Now, those things happen very frequently.

Mr. DANFORTH. Assuming that the legal proceeding is to indict a man for conspiracy when perhaps they are only guilty of violating a municipal ordinance, is it not necessary for this committee to have some specific facts offered before they can act?

Mr. HILL. Exactly.

Mr. CARLIN. He is referring now to the specific fact of this indictment.

Mr. DANFORTH. He said there was another indictment.

Mr. CARLIN. There may be some others.

Mr. HILL. Now, in this Buchanan indictment, there is but one way to find out about that and everything which was done in relation

to procuring the indictment, and that is to embody it in a proceeding—to get it from the witnesses who testified there or from a bill of particulars, and that must be secured from the district attorney. All we can say to you is to go to the district attorney or his office for the names of the witnesses and get them down. They will not give that at our solicitation, and we have no means of getting at them. I understand you do not feel like doing that, and I do not blame you, and I only mention this in this connection because of the insistent urging from other Members, that a high prerogative of a Member of Congress was invaded, and that this matter should be investigated, and on account of the lack of a legal statement of an offense in this indictment I feel this particular indictment against Mr. Buchanan, only, ought to be investigated.

Mr. CARLIN. Assuming we have the power to investigate the office of the district attorney with relation to the finding of this indictment and other indictments, if I understood you correctly, the only reason you seem to think this particular indictment ought to be investigated is because the indictment itself is frivolous. Have you any fact or name of any person which would point to the fact that the indictment was corruptly found other than the fact that you have related?

Mr. HILL. No; I am endeavoring to have the committee ask for those things, if possible. If I give you the names of the men and refer to other things, you know perfectly well that if I give you the names you will feel at liberty to write them.

Mr. CARLIN. Some of them, at least.

Mr. HILL. Now, I give you the district attorney's office in New York for a bill of particulars and information that they ought to be asked for if you feel like doing that.

Mr. WILLIAMS. Is there not a proceeding here on application of one of Mr. Buchanan's codefendants, Mr. Fowler, in which the sufficiency of this indictment is to be passed on in the District of Columbia?

Mr. HILL. No, sir; I think not, Mr. Williams. There is a hearing set for this week before the United States commissioner of the district court of the District of Columbia, and of course there they only go into the case enough to warrant the commissioner in feeling that there is probable cause of guilt.

Mr. WILLIAMS. They have not raised the sufficiency of the indictment here.

Mr. HILL. It will probably be raised there. If they have them there, I have no doubt we will have a chance to get at some documents for the use of this committee—the very thing we think you ought to have.

Mr. TAGGART. What seems to me to be marvelous about the indictment is that he is charged with interfering with foreign commerce in explosives. Of course, the Treasury Department is actively engaged in the same thing. They were specifically authorized under the resolution of March 4, 1915, to direct the collectors of customs at the different ports to withhold clearance from any vessel carrying munitions of war, etc., to the belligerent nations. The Treasury Department informs me they are vigorously engaged in interfering with this particular matter, and Mr. Buchanan is accused of doing the same thing.

Mr. HILL. Exactly, and I am trying to urge that in giving you my judgment of this matter.

Mr. TAGGART. He ought to have a job in the Treasury Department.

Mr. HILL. Of course, I may not succeed, however.

The CHAIRMAN. Let me make another suggestion: We have these charges 5 and 6 narrowed down to the fact that you charge Mr. Marshall corruptly induced the grand jury to indict Mr. Buchanan and others.

Mr. HILL. Yes, sir.

The CHAIRMAN. Now, charging crimes—and here is the gist—“without there being evidence before said grand jury which would in any degree justify the finding and filing of such indictments.” Charge No. 6 is: “Corruptly procuring indictments from the grand jury in said district, charging reputable citizens with crime, although there was no evidence before the grand jury which would in the least warrant such charges.”

Can you give us something on that point? In other words, can you show us that the indictment was gotten by the district attorney himself without any evidence upon which to warrant the grand jury in so finding?

Mr. HILL. I am of the opinion that that will be impossible for us to give now until we get into the trial of the case, because the district attorney will not give that out.

Mr. WHALEY. Did you ever make a demand for the papers?

Mr. HILL. I did not, but Mr. Harry Davis, one of the attorneys for one of the parties, asked for it on behalf of his client and offered to give that to me.

Mr. WHALEY. I think the men charged with crime should be confronted with the witnesses.

Mr. HILL. We have that constitutional right, and everybody has it, whether a Member of Congress or not, and yet that is withheld.

Mr. TAGGART. They measure that by the practice of the State.

Mr. GARD. They have no right to violate the Constitution. As I understand it, they can not get the names of these witnesses at all.

Mr. HILL. There is no question about it. Mr. Buchanan will never be able to get it in his individual capacity.

Mr. BUCHANAN. I wish to say that it has never been my intention to make this part of the hearing before the committee at this time—this feature of this matter—and I reluctantly agreed to do that at the advice of friends. I have got information from which I want to say that I believe that that has been the practice over there. I have witnesses here, I think, who will give you sufficient prima facie evidence that will satisfy you on this question. If you will allow Mr. Hill to proceed with his statement, inasmuch as these are New York men and would like to get away, perhaps, to-day, we may be able to put them on and give you further information on that point, and we can go on with the others later. Of course, I know they have done this in my particular case without any evidence. You do not know that; but I do know it.

The CHAIRMAN. I think if you will convince this committee that this indictment has been procured against you without any evidence, I think we will act mighty promptly.

Mr. BUCHANAN. If I were at liberty too give you all the information I have on that, I am quite sure you would be convinced. You

would undoubtedly be convinced that I have done nothing—not even discussed the question of strikes or interfering with interstate commerce at any time, with anybody at all—and I could give you this information that you desire, but I believe that I should be absolutely violating confidences. I could not give it to the committee without violating such confidences.

Mr. MOSS. Were you ever present at any meetings of Labor's National Peace Conference in New York or in this District?

Mr. BUCHANAN. No; the only meeting we had was in Washington, when we organized. The other meetings were in Chicago. Chicago is the headquarters.

Mr. HILL. Now, passing this matter with saying that I am going to endeavor to get you full particulars and refer you to those matters, feeling that you can get this information, if you feel so disposed, I am going to refer to some other charges briefly. Mr. Buchanan, some days ago, under probably his old proceedings, brought to your attention the complaint made by the independent tobacco dealers and others, in New York, two or three different concerns there, with reference to a conspiracy of the United Cigar Stores and the American Tobacco Co. in driving out the independent competitors, and other methods. That complaint was made first probably a year ago, and then another one later on, and those complaints have all been pigeonholed, and never any action taken. Now, the main claim—

The CHAIRMAN (interposing). That is charge 1 in the first articles of impeachment on December 14.

Mr. HILL. The men who are complaining about it are Isaac Ochs, president of the New York Retail Tobacco Men's Association; Mr. Wolf, president of the National Wholesale Tobacconists' Association; a member of E. Munday & Sons; and John E. Locher, a tobacco dealer in New York City. These are the men who filed the complaints, and can get nothing. They first filed the complaint—and I think you have that data—several months ago. The Department of Justice referred it to Mr. Marshall, and the matter ran along for a long while, and was presumably given in charge of one of his assistants. No report was made and nothing was done. Another complaint was made and referred to the same quarter. No report was made; and it was referred by Mr. Marshall to some assistant, who evidently has it under control, and that matter has been going along for a long while, for months and months, and even probably two years ago, in 1913, when the first complaint was filed. Now, these same people have entered into the drug business. They are big handlers of cigars and tobacco and are buying up a chain of drug stores over the country and selling to their operators, the same as they do to the United Cigar Co.'s stores, which they own, at a rate which would run out any independent dealer, because he must buy at least 80 or 85 per cent of all articles of the trade from the same people who control all of the tobacco companies, and they will continue to do that until—

The CHAIRMAN. What corporation are you referring to?

Mr. HILL. The American Tobacco Co., the Metropolitan Tobacco Co., and the United Cigar Stores Co. Those are all operated by the same people, and of course these complainants are charging that these people are operating just the same now and just as elaborately and as far reaching as before the dissolution of the American Tobacco Co.

under the antitrust proceedings some years ago, and they are operating without giving any attention to the legal rights of other dealers. Now these people seem to feel that they are being discriminated against because the district attorney will not make any efforts to bring out a report after the matter has been on file some years.

Mr. TAGGART. Do these complaints set out a statement of facts that would show criminal liability?

Mr. HILL. Yes, sir; enough so that the Department of Justice immediately sent back this matter to the district attorney with instructions to stop that kind of practice.

Mr. TAGGART. Does that appear of record in the Attorney General's office?

Mr. HILL. Yes, sir; and these gentlemen whose names I have given are the complainants and they have copies of the complaint for themselves, and can be procured by asking them.

Mr. DANFORTH. Which charge does this come under?

Mr. HILL. One and two, I think.

The CHAIRMAN. That is in the article of December 14?

Mr. HILL. Yes, sir; and 1, 2, and 3 of the articles in this last impeachment, cover that whole thing pretty carefully.

Mr. DANFORTH. Those cover offenses against the neutrality of this country?

Mr. HILL. It is No. 3. The next one is:

I charge him with corruptly neglecting and refusing to prosecute gross and notorious violations of various criminal, neutrality, customs revenue, and antitrust laws of the United States within said judicial district.

Mr. DANFORTH. That is No. 4?

Mr. HILL. Yes, sir; that is the one under which this can be placed, because it speaks of various criminal, neutrality, customs revenue, and antitrust laws.

Mr. WILLIAMS. Do you know whether or not when these charges were alleged and were referred to the District Attorney of New York, the district attorney, through his assistants did, in fact, investigate to ascertain whether or not there was sufficient foundation on which to base a prosecution?

Mr. HILL. No; there is no way of getting that until they submit what they have done.

Mr. BUCHANAN. They did hold hearings. They held long drawn-out hearings, without any action, my information is, and I think it can be proved that the district attorney in New York even made a report. He did make a report, but he made an incorrect report to the Department of Justice, in other words. I just can not get the word I want to use. In other words, he did not say what had been shown in the hearings in the way of violations of these laws, which was set forth in the decision of the Supreme Court in the tobacco cases—well, that case in 1911, was it not? I can not retain those in my mind. It was where the decision was rendered, at any rate, by the United States Supreme Court—that they practiced exactly the same thing.

The CHAIRMAN. What is your information as to the men who made the report?

Mr. BUCHANAN. The report to the Department of Justice?

The CHAIRMAN. Yes.

Mr. BUCHANAN. My information is Mr. Marshall made a report to the Department of Justice.

The CHAIRMAN. Did Marshall hold hearings or did one of his subalterns?

Mr. BUCHANAN. My information is the district attorney made a report to the Department of Justice, and the report was that there was not sufficient evidence to take action.

The CHAIRMAN. Do you know which subordinate or subordinates held the investigation?

Mr. BUCHANAN. I gave you the names before. I do not remember them now.

Mr. CARLIN. You also mentioned the name of Mr. Hunter.

Mr. BUCHANAN. My statement was taken down, was it not?

The CHAIRMAN. Yes.

Mr. BUCHANAN. It was in there.

The CHAIRMAN. You gave the names of two assistants when you were here before?

Mr. BUCHANAN. Yes, sir.

The CHAIRMAN. Those were the names of the people to whom Marshall referred the matter?

Mr. BUCHANAN. Yes, sir; he referred to two assistants, Stevenson and Mr. Thompson.

The CHAIRMAN. Have you both names?

Mr. BUCHANAN. I do not know that I have got them, but I can get them though.

Mr. DANFORTH. Do you know whether the evidence was submitted with the report—the evidence taken by the assistant attorney general?

Mr. BUCHANAN. No, sir; I am not familiar with the evidence. That was submitted, I believe, though.

Mr. DANFORTH. You do not know whether it was submitted with the report?

Mr. BUCHANAN. No, sir.

Mr. DANFORTH. Do you know when the report to the Department of Justice was made?

Mr. BUCHANAN. I do not know. I had that information. I do not know whether I have it in the office or not.

The CHAIRMAN. Mr. Buchanan in his former statement said the matter was referred to Mr. Marshall and Mr. Marshall appeared and invited these complainants to appear before him with their evidence and testimony, in order to proceed in accordance with the directions of the Attorney General, and when the parties appeared he referred them to two assistants, Mr. Stevenson and Mr. Thompson, and these gentlemen proceeded in a course of procrastination and dragged the matter along.

Mr. BUCHANAN. Yes, sir.

Mr. HILL. The name of the drugs company under this same head, that the tobacco company is endeavoring to absorb, is the Riker-Hagerman Drug Co. They have a chain of stores over the country, and this tobacco company managed to get a controlling interest in that stock and have put in a chain of stores, and the independent drug people have filed a similar complaint and they have been unable to get any action, and the matter was referred back to Mr. Marshall on the theory that the combination of these companies was a conspiracy to drive out the independent merchants, and there has been

no report. It was referred to one of his office assistants in the same manner as the others, and it leaves those fellows with their complaint high and dry in the same manner that the independent tobacco dealers were left. I only want to discuss one other matter here before hearing these other gentlemen. In the second column of this impeachment proceeding, down at line 8—I will call your attention to it—is the following:

I charge him of being guilty of attempts by private solicitation of influencing the official actions and opinions of judges in the southern district of New York while in the performance of their judicial duties.

Then following that the next one, the next one, the next, and the next, and on down—following that there are six articles on page 1044, the second column. Counting all, it would probably be No. 17. I was counting eight from the top:

I charge him with being guilty of attempts by private solicitation of influencing the official actions and opinions of judges in the southern district of New York while in the performance of their judicial duties.

I charge him with having used the powers of his office to cause and procure a discrimination in the assignment of judges to conduct the trials in said district, so as to discriminate against one or more resident judges.

I charge him with having used the powers of his office to procure or assist in the procurement of judges to be imported into the southern district of New York from other districts for the trial of cases in said district by falsely representing the conditions of judicial business within said district.

I charge him with being guilty of private solicitation with intent to influence the official acts and decisions of judges imported as aforesaid.

I charge him with having attempted to corrupting control decisions and official actions of one or more of such imported judges.

I charge him with having procured the assignment of one or more imported judges for the conduct of trials in the said district for the purpose of preventing defendants in such cases from receiving a fair and impartial trial at the hands of resident judges.

Now, all of those—there are about eight—touch upon the same subject matter.

The CHAIRMAN. There are six of those.

Mr. HILL. Yes, sir; and now it is charged here by Mr. Buchanan that some of the things set out in the six allegations or counts of the impeachment proceedings represent some of the conduct of the district attorney in that district.

Now, I have not had an opportunity to interview any of these judges, but I have in my possession a statement or a reference, in which it says, upon the question of solicitation of judges and upon the questions brought out in these charges—I will just read the names: Some of these judges are Hon. Julius M. Mayer, judge of the district court of New York, and Hon. E. M. Wardman, judge of the district court for the district of Washington; and then Mr. Buchanan said that he ascertained the full name of District Judge Cushman. There are three men who have been connected with the trial of cases which come under the charges here that I refer you to as men who will give you the light or information that you desire upon the question of the attempts of this district attorney to influence the judges who came there.

The CHAIRMAN. You mean to say he attempted to influence those men.

Mr. HILL. I take it that it is either these men or that these men are acquainted with the facts of his endeavoring to influence them. Now, my information, which comes from talking this matter over

with different parties who do not know about it except what they hear—and which I, of course, would not offer you as evidence—is that in the importation or the bringing in of judges from other districts, to try a particular case that is pending, that he has taken the judge into conference and told them about how it ought to be decided; that there was a great rush of business down in New York, and that they did business that way, and have attempted to thwart justice and get decisions where a man who would know all of the circumstances would not do it. Those seem to be pretty big charges to make, but these men, whose names I have given you claim they can tell you those things are true.

Mr. TAGGART. Are they United States circuit district judges?

Mr. HILL. Yes, sir.

Mr. DANFORTH. These charges are, summed up, by importing judges from outside districts, justice has been thwarted and the justices from the outside, violating their oaths of office, have taken his advice as to how to decide the cases, instead of deciding them according to their oath of office, etc.

Mr. HILL. He only charges attempts.

Mr. BUCHANAN. I should like now to have Mr. Hill stand aside and put on these witnesses I have here on another feature.

The CHAIRMAN. And to have Mr. Hill proceed later?

Mr. BUCHANAN. Yes, sir.

Mr. WILLIAMS. You mean to charge he attempted to corruptly influence the decisions of the judges in his courts?

Mr. HILL. My information is he went to the judges and attempted to influence them and to tell them how to decide the cases. I think these judges are willing to tell you that. I do not think the judges themselves have done anything wrong.

The CHAIRMAN. Don't you think that was contempt of court?

Mr. HILL. I think so.

The CHAIRMAN. Don't you think the court should have punished him?

Mr. HILL. I think we should hear the judges.

Mr. BUCHANAN. The witness I speak of may give you some information on this subject.

The CHAIRMAN. Who is the first witness?

Mr. BUCHANAN. Mr. Slade.

The CHAIRMAN. Call Mr. Slade.

STATEMENT OF MR. MAXWELL SLADE.

The CHAIRMAN. Please give your name and address and occupation to the committee.

Mr. SLADE. Maxwell Slade, 200 Broadway; occupation, attorney.

Mr. BUCHANAN. Mr. Chairman, this is in regard to the Osborne-Tanzer case.

Mr. HILL. Mr. Chairman, I should prefer Mr. Slade to make his statement, and then we examine him.

Mr. BUCHANAN. I think it would be better to have him make his statement first.

Mr. SLADE. I will make my statement, gentlemen, in a general way, and if there is anything specific as I go along I will point it out.

The CHAIRMAN. Have you read these charges by Mr. Buchanan?

Mr. SLADE. I have, sir.

The CHAIRMAN. Now, the charges upon which he calls you are from 25 to 38. If you can give us anything definite or specific to amplify those charges the committee will be glad to hear from you.

Mr. SLADE. I have prepared a written statement of many of the charges contained in the resolution introduced. I will be glad to submit this after I make my general statement, so you can follow me.

Mr. DANFORTH. Are they numbered?

Mr. SLADE. Yes, sir; A, B, C, etc. I have them specifically set forth by numbers, covering all of the particular charges we make.

The CHAIRMAN. To which resolution do you refer?

Mr. SLADE. Tanzer case.

The CHAIRMAN. No; the impeachment resolution or the resolution to make the inquiry.

Mr. SLADE. The second resolution—the one to make inquiries?

We have charged, and do charge now, that the office of the United States district attorney in the southern district of New York has degenerated to that extent where it is no longer an office for prosecution but persecution, by any means and all means for the purpose of accomplishing results agreeable to them. Mr. Jim Osborne is an ex-district attorney of the city of New York and has been for a number of years. Mr. Jim W. Osborne is at present, and has been for a number of months, a specially appointed United States district attorney in the office of the district attorney in the Federal building. Mr. James W. Osborne, jr., a nephew of Jim Osborne, has also been a member of that office and is a member of that office associated with them. Mr. Osborne and Mr. Marshall have been social friends for many years. Mr. Houghton, the commissioner who first issued the first warrant in this case, has been an intimate and close friend of Mr. Marshall and Mr. Osborne for a great many years. Mr. Marshall was connected with a firm formerly known as O'Gorman, Battle & Marshall. Mr. Marshall, when he was appointed United States district attorney in the southern district of New York severed his connection apparently, but took with him most of the staff in the office, and they became United States assistant district attorneys.

A number of the members who were formerly in the district attorney's office were taken out of that office and placed in the office of O'Gorman, Battle & Marshall. In 1915, in March, for the first time my office, composed of myself and a younger brother, were retained by a Miss Tanzer in the city of New York to bring action against Mr. Jim W. Osborne for breach of promise. She was recommended to us by her employer, a man of considerable wealth and a man of reputation and a man of standing in the community, who heard her story and investigated it and then referred her to us. Upon investigation which we made we found that before she came to our office she was at the office of two other attorneys, but they declined to take the case. We made an investigation to find the reason for that and were informed by the firm of McManus, Olcott, Gruber & Bonyne that they were friends of Jim Osborne's and had been friends for 30 years, and for that reason they did not feel justified in taking a case against him. We then made inquiries of the second attorney and

we found he was a friend of Osborne and had known him for twenty-odd years, and for that reason he could not prosecute.

The CHAIRMAN. What was his name?

Mr. SLADE. Max Steuer. We made inquiries as to whether they knew of any reason why we could not take the case and they said they did not. The only reason they refused it was because of the reasons I stated. I then started an investigation and spent several hundred dollars employing private detectives and investigators and sent them out to check up the story told by this little girl, and every word was found to be true. Her story was backed up by oral and documentary proof.

After we had gotten the proof together, we took it upon ourselves to call Jim Osborne up and tell him of the facts and asked him to settle this matter with the girl direct, and to leave Slade & Slade out, and to settle the matter himself—to dispose of it directly. This is not the only case in which J. W. Osborne is interested of similar nature—that there are other girls in New York in the same situation. We could not prevail upon Osborne to settle this case with Miss Tanger direct. We were finally forced to institute suit in the Supreme Court of New York, where it properly belonged, and it was instituted on the 17th day of March, 1915. A motion was immediately made by Jim Osborne for a bill of particulars, and to the surprise of everybody, when his affidavit was read (the complaint only specified one instance where this unfortunate occurrence took place), but in the affidavit he set forth: "I desire to know the different hotels and the different times I was with this little girl." We gave him that information, and instead of opposing the affidavit we granted a bill of particulars and served it on him. A motion was then made to prefer the case. To his surprise we consented to a preference, and it would have been set for trial within a week. However, he realized he could not go into a State court with this case, and he laid the foundation to bring it, in some way, before the United States court. I want you gentlemen to bear in mind that in the United States statutes there are no statutes providing for the punishment of blackmail, and if this case was anything at all in the nature of a crime, it was blackmail, pure and simple, because it would be obtaining money from Jim Osborne in a fictitious suit by means of charging him with certain acts. They, Osborne and his crowd, had no means of transferring this case to the United States court while it was pending in the State court, so they adopted the following means: They took a love letter, which I will read to this committee, which was written to him by this little girl some six months prior to the suit, in which she tells him she loves him and does not want his diamonds or money, or anything else, but she wants him to keep his promise to her, and upon that he makes an affidavit, and goes before Commissioner Houghton, and without any other evidence gets a warrant issued, and by this method brought into the United States district court the Tanger case.

A hearing was had before the commissioner, and the only evidence offered at that time was the statement of Mr. Jim W. Osborne, and the introduction of this love letter, and the commissioner determined at that time that that was sufficient, or that there was nothing in the letter to hold her for the grand jury. A grand jury then was supposed to have been impaneled—

Mr. CARLIN. What was the name of that commissioner?

Mr. SLADE. Commissioner Houghton.

I may say at this time that only a week ago this commissioner was arrested, charged with inducing a citizen in the city of New York to loan money to his brother upon two spurious accounts, on which he obtained something like \$2,000 or more, and he used the office as commissioner of the United States in inducing this man to make this loan.

When this thing was started, Mr. Marshall, before any proceedings were ever thought of, as far as Jim W. Osborne was concerned, came out in the newspapers and announced that he has known Jim Osborne a great many years, and that he would not believe what anybody said, and that this was an attempt to blackmail, and in following up this newspaper would come out charging the Slades with every crime on the calendar.

Mr. MORGAN. What newspaper articles do you refer to?

Mr. SLADE. All newspaper articles of Marshall, Mr. Wood, Mr. Hershenstein.

The CHAIRMAN. Who is Wood and Hershenstein?

Mr. SLADE. Our assistant district attorney. Mr. Wood was in the office of Marshall before him. Mr. Hershenstein was in some way connected with Mr. Wood before he became United States District Attorney.

Mr. CARLIN. Did you say they charged you with blackmail?

Mr. SLADE. The newspapers said that they were going to charge the Slades with blackmail and obtaining money under false pretenses.

Mr. CARLIN. Did you ever bring any civil suit against those parties?

Mr. SLADE. Not yet. We are waiting until the criminal action is disposed of.

Mr. CARLIN. You got as far as the grand jury and this young girl.

Mr. SLADE. The grand jury was impaneled and an effort was then made to establish some crime against the Slades. The charge originally in the newspapers was that we had committed blackmail. The foreman of the grand jury was a man named Bossevain. He was an uncle of Mrs. Bossevain Mulholland, a lady lawyer, connected with Jim W. Osborne's office, and has been an associate of his for a number of years; and this man was the uncle of her husband.

Then the effort was immediately made to bring in all the witnesses who had anything to do with the Slade case, so far as being witnesses in the civil suit before the grand jury, and here was the system used:

A subpoena would be issued, entitled United States of America, informing the witness that he was to appear before the grand jury. When the witness arrived at the building he would be immediately hustled into room 823, which is not the grand jury room, but the room of Marshall and others, and there would be found present Mr. Wilcox, an associate of Osborne, Mr. William Osborne, jr., the United States district attorney, and two or three others from the office of Jim W. Osborne, who would take this witness in hand and by divers means thrash out and obtain from him statements they wanted, and then they would hustle him before the grand jury; and then before the grand jury they would say that they did not like his testimony and, "Did you not testify so and so in this room a minute ago," and in that way they secured statements which they thought were in some way detrimental to the Slades.

This continued for weeks. Finally, when the indictments came down, instead of charging the Slades with blackmail——

Mr. CARLIN. How many witnesses went before the grand jury in that case?

Mr. SLADE. As near as we can trace them up, about 25.

And not a single person who went before the grand jury—and I make this statement without fear of contradiction—knows the Slades or ever talked to them in their lives.

When the indictments finally came down, instead of the Slades being charged with the commission of any crime in the bringing of the suit, or up to the time of the suit, to the surprise of ourselves we were charged with "obstructing justice and conspiracy to obstruct justice," which consisted in this: Mr. Safford, a clerk in the hotel where this unfortunate occurrence took place between Osborne and this May Tanzer, was the man who could identify Mr. Jim W. Osborne beyond all doubt, because he waited on him, he showed him the room; he was the one who had the conversation with him. Our investigator could not find Mr. Safford; it seems that he left the employ of that hotel.

On the morning before the hearing before the commissioner we did discover, through a letter which was brought to us by a man named Darling, and we, upon making inquiry, were informed that we could not reach this man, because he lived in a little bit of a place that the train would only run to about once a day, and the next train would not go until half-past 8 at night, and the hearing was on the next morning. We induced him, together with two other people we took along, to come with us and point out the man who said he knew Jim W. Osborne. We took our car—Mr. Slade, jr., did—and after traveling six hours we reached there, very late at night, and the employer of this Mr. Safford induced him to come back to New York and identify this man, if he could; and they came back by the same car and they reached New York City about half-past 3 in the morning.

We had a subpoena for this man. When we got to his place, and he was finally induced to come to New York, his fare would have been \$18.10, according to the legal rate of mileage. He told us he had no money, and we then gave him \$10, in the presence of his employer and in the presence of five or six other people who were present at that time, for his fare to New York. When we got to New York, at half past 4 in the morning, Mr. Slade, jr.—I might say this, because he was both an Elk and a Mason—he asked him if he would not be good enough to stop at his house, because he had a spare room; because he did not want to stop at the Elk's rooms or at a hotel, and he stayed there that night. That is charged to Mr. Slade and myself as a conspiracy—to secrete this witness in the house of Mr. Slade, and because he gave him \$10.

Mr. CARLIN. Did you give the name?

Mr. SLADE. Safford.

Mr. CARLIN. Who is Slade, jr.? Your son?

Mr. SLADE. No; my oldest brother.

When this witness finished testifying, we then gave him \$14 more, for his legal expenses for the time he was in New York and told him he could go home; and that is charged as a crime and conspiracy to

influence his testimony before some proceedings which might in the future be brought by the United States courts.

Those are two of the crimes.

One other crime is the overt act they charge. My name was not mentioned in the indictment. I may say that, gentlemen, through the entire Osborne case I had but very little to do with it, because at that time I was in the trial of cases almost for a month, continually, in State courts, so that Mr. Slade, jr., had charge. I neither saw nor talked to any of the men, reporters or otherwise, and yet, to my great astonishment, my name was mentioned once, in which I was charged with conspiring with a man named Le Gendre, a reporter of the World newspaper of New York City, by which I and he and Mr. Slade conspired to have him make what is known as a "composite picture" to show that Mr. Osborne and Miss Tanzer were snapped together, when in fact and in truth they were not together. That is the first time I ever heard of this composite picture—when I read it in the indictment.

I began to make an investigation to find out what it all meant, and I found this reporter in the World Building, who is a photographer for that paper. This is the story that he told, gentlemen, and we have it in writing:

He was at our office one morning. He came in and told me that his paper desired a picture, both of Mr. Osborne and this little girl. "Would you have any objection to letting me take a picture of them?" and I told him I had no objection if she had no objection. "Well, is it not possible that we could have a picture of the two?" and I said to him, "If you can get Mr. Osborne and this little girl to consent to pose for you, help yourself." He left my office to go over to see Jim Osborne, to find out whether he would consent to posing. When he got over there, he found Mr. Jim Osborne, Mr. Wood, Mr. Marshall, Mr. Hershenstein, and a man named Baker. Mr. Baker is the secret investigator for the postal department in New York. They called him the "evidence gatherer."

This proposition was submitted by Mr. Le Gendre to Mr. Osborne, whether he would not consent to pose, so that the picture could be taken. Mr. Baker and Mr. Marshall then suggested to him, for the first time, whether it was not possible to take a picture without the two people being present. He told them it was. They then asked him to make a composite picture. He went to the World office and made a composite picture and brought it back to Mr. Marshall. Mr. Marshall took that picture and told this reporter: "I have simply put my memorandum on this to show what it is possible in photography to do."

This young man is asked to go and call up the Slades on the telephone, with the purpose and object of subsequently having somebody sent to our office to see if we would not fall for the buying of this picture; and it might possibly be used in the trial, and they would string this conspiracy against the Slades for attempting to bargain for a picture which was supposed to be taken at some place of these two parties when it was a fake picture.

Mr. CARLIN. Was this before the indictment against you?

Mr. SLADE. Before the indictment against me.

Mr. CARLIN. Was the young girl indicted?

Mr. SLADE. No, sir; Rae Tanzer was first indicted.

Mr. CARLIN. And how long after that were you indicted?

Mr. SLADE. About two weeks.

Mr. CARLIN. And was it in that interval that that photograph business came up?

Mr. SLADE. Yes.

Mr. WILLIAMS. She was indicted for blackmail and you for conspiracy?

Mr. SLADE. She was indicted for fraud in using the United States mails.

Mr. TAGGART. And you were indicted for obstructing justice?

Mr. SLADE. Conspiracy to obstruct justice and prevent the appearance of a witness.

Mr. TAGGART. Before the grand jury?

Mr. SLADE. That is their claim—they do not say that—

Mr. TAGGART. Was there any subpoena issued?

Mr. SLADE. We never knew of it. The first time we knew of it was 10 days after he testified before the commissioner, when his employer came down and made a statement to the commissioner that he had—after Mr. Safford left my place of business, somebody came down there and left this paper here [indicating] without its envelope.

Mr. TAGGART. They subpoenaed him after you got him there at 3 or 4 o'clock in the morning?

Mr. SLADE. Yes.

Mr. TAGGART. What did you do then?

Mr. SLADE. The case was to come up in three or four days, but on account of the preface saying we kept him in New York—

Mr. TAGGART. You kept him three or four days to be a witness?

Mr. SLADE. In the civil suit.

Mr. TAGGART. In the first court?

Mr. SLADE. And expected it to come up any day.

Mr. TAGGART. Did you subpoena him?

Mr. SLADE. He was under our supervision or surveillance of our investigator, who was with him at his friend Darling's, who found him for us.

Mr. TAGGART. During that time he kept out of sight, waiting to take the stand as a witness?

Mr. SLADE. Yes.

Mr. TAGGART. During that time was any subpoena issued for him?

Mr. SLADE. None whatever, sir; nor was there any intimation from any source that he was wanted as a witness. He could not have been wanted as a witness, because he was the man who identified Jim W. Osborne.

Mr. CARLIN. You left off where he went to the telephone and told this man to call.

Mr. SLADE. He did telephone: "May I talk to one Mr. Slade"? Somebody answered him on the phone and said he was not in, but subsequently another phone call was at the office, and one of the Mr. Slades did talk to him—I think it was David Slade, in which he said, "Yes; I think I have made arrangements for the purchase," or words to that effect.

Then Mr. Baker, the investigator for the Post Office Department, refused to go into this scheme and told Mr. Marshall—this was in the presence of Le Gendre, a perfect stranger to us—said, "Don't try

to send that picture over to the Slades; they would not fall for it. They may want an affidavit to know where it was taken, the photographer, the circumstances. Do not be a fool, and do not try to do that."

So they did not send the picture over, but what they did was to tell Mr. Le Gendre that they had subpoenaed him to come before the grand jury. He was in the hall of the Federal Building. Mr. Wood walked up to him and said, "Mr. Le Gendre, a subpoena is out for you to appear before the grand jury." "What for?" "You are wanted, and if you do not go we will punish you." "If you tell me there is a subpoena out for me, I will go in there." So he walked into the grand-jury room. I will give you, upon information, the substance of what he testified before the grand jury. "Did you come to the Slades this morning"?

Mr. CARLIN. Where did you get this information from, Wood?

Mr. SLADE. Hardly from Wood.

Mr. CARLIN. From Le Gendre?

Mr. SLADE. I did. May I say this, I am now giving you some information which is really from the grand jury room. I would be glad—

Mr. VOLSTEAD. No; that only applies with reference to jurors, not witnesses.

Mr. SLADE. I am constrained to think that it is secret in all cases, but I am giving you what the records will disclose, and if you give this man the authority to testify he will give you the facts. These are the facts, and they can not be contradicted, and the witness will be produced to testify on that subject.

Did you see Mr. Slade on such and such a morning?

Yes, sir.

Did you talk to him with reference to taking a picture of Mr. Osborne and Miss Tanzer?

Yes, sir.

And is this the picture?

Yes.

Was this picture taken while they were both together?

No, sir.

Where was it taken?

In your office.

That is all.

He was not permitted to go any further to tell the circumstances.

The CHAIRMAN. Is that Le Gendre you are speaking of?

Mr. SLADE. Yes. Mr. Le Gendre when the indictment was published and he saw this fake picture article, he immediately went to his newspaper, and he gave them an affidavit, as I am informed by Mr. Sweet, one of the city editors, in which he told the facts as I have told them to you, that when the trial came up of the United States against Slade and McCullough, one of the supposed conspirators and one of our investigators, the Government got wind that Le Gendre was going to tell the truth. They then subpoenaed him before the grand jury, which was then in session investigating, and they tortured him for an hour and a half, and got him to change the story, and say that Slade suggested to him to make this fictitious picture, and he declined to do it. That gentleman will testify to that effect.

We come back to Mr. Safford. He was finally indicted and arrested and charged with perjury upon a warrant issued by Mr.

Houghton. The man who made the affidavit charging him with perjury is an inspector known as Mayhew, of the Post Office Department. I have his sworn testimony, under oath, and in his cross-examination he said that "I did not know the parties interested in the case; I do not know Mr. Safford; I do not know Mr. Osborne. I know nothing about the facts." In other words, "I know absolutely nothing about this." "Well, then, how did you come to swear to this affidavit, charging Safford with perjuring himself before Houghton?" "Mr. Wood told me to do it."

This was in open court, and it is a matter of record here. That is how Mr. Safford was brought in the United States court to be punished for perjury upon a perjured testimony made at the instigation of Mr. Wood.

Mr. NELSON. How is Wood connected with Marshall?

Mr. SLADE. Mr. Wood is supposed to be his chief assistant district attorney in that office, and he and Hershenstein, which is common knowledge in the city of New York, are the ones who frame everything and dispose of everything necessary to be accomplished in any case. It is notorious, and it is the general topic among the bar in New York City.

The CHAIRMAN. Wherein was Safford charged with committing perjury?

Mr. SLADE. Safford was charged with committing perjury before Commissioner Houghton in testifying that he knew Mr. Jim W. Osborne to be the man who registered at his hotel, and this is the story he tells by which he identifies them; and his story is borne out by all the employees of this hotel.

Mr. CARLIN. As we go along—is it your idea that Mr. Marshall directed Mr. Wood and this other assistant to do this, or that he had knowledge they were doing this?

Mr. SLADE. Absolutely and unqualifiedly; and I am satisfied from the record here, gentlemen, if you will read it as lawyers, you will find not only that this is proved conclusively, but it is conclusive beyond all human doubt.

Mr. Marshall was the main inspector, and his sole and only purpose was to save Mr. Jim W. Osborne. Mr. Hershenstein is nobody. He would not have any authority to do anything unless he had the authority from Marshall. Mr. Marshall knew this fact. We charged him on a hundred different occasions in open court with that fact. We have pleaded with the United States district court to make an investigation. We have pleaded with the circuit court of appeals to make an investigation. We have charged the judges up there with having no nerve and backbone to take this thing up. It is common talk of the bar and citizens of the State of New York. Every man knows it has been done merely to save Jim W. Osborne and the powerful machinery and influence he represents in the city of New York. There is not a jury in the State courts that would not convict him and hang him on this testimony without leaving the jury box, and he knows it. But it was used to further the power of this district attorney's office. The documentary proof which we were able to produce or could get our hands on, such as hotel registers, where registering was under fictitious names, were destroyed and disposed of. When we got there, we could get no answer except "The district attorney has them." That is as far as we ever got.

We have here witnesses who are ready to swear and show you that they were locked up in the office of the United States district attorney, men who could testify that Jim Osborne was the man, but they were locked up and not permitted to come out, and we did not discover that until after the Safford trial.

Let me give you a remarkable situation, so far as the Safford trial is concerned.

Mr. HILL. What was the result, a conviction?

Mr. SLADE. Not in the sense of a legal conviction.

Mr. CARLIN. Were they convicted in the Federal court?

Mr. SLADE. Yes, sir—not by the Federal court, but by the power and railroading of a man the most insidious that ever existed in the city of New York. I will point out clearly—take this record; here is the record which we have printed and which is now before the circuit court of appeals. A day was set for the trial of this case, before a criminal judge holding criminal term, and to our great surprise, two days before the day set we got an announcement that Mr. Justice Hough was going to try this case. He was sitting in the civil part, and he set on a Saturday to dispose of a civil suit, so that he could get in and try this case two days before the day set down, and he took in with him a jury which was not impaneled for the purpose of trying criminal cases but civil cases, and he had before him two and a half weeks to try this case.

If you ever investigate the jurors in that case you will be satisfied that Safford never had a chance in a million under the circumstances. There was but one man on that jury, No. 3, who had the nerve to stand out for 11½ hours, fighting the other 11 men to give this man a square deal; and he will be able to tell you the efforts and means that compelled him to say “yes.”

Mr. TAGGART. Whatever became of the breach of promise suit? Did you ever try that?

Mr. SLADE. No, sir. I think it will be interesting to know what became of it.

Mr. TAGGART. Who defended Safford?

Mr. SLADE. We did, sir; and his counsel was insulted from the time he was on that floor until that case was finished. All we heard from the justice on the bench, when we attempted to show the close connection between Osborne and Marshall toward a certain athletic club, the Justice said, “scandalous, to ask such questions of a witness.” That is the treatment we got in this deal. If you will read it, it will astonish you. I can not attempt to repeat the testimony that was had in that case.

Mr. CARLIN. I want to get this thing straight in my own mind. In the Federal court there were several indictments found, one against the young lady for fraudulently using the mails?

Mr. SLADE. Two sisters.

Mr. CARLIN. Two sisters?

Mr. SLADE. Yes, sir. Myself and my brother and the investigator—everybody except one Mr. Slade, Benjamin Slade.

Mr. TAGGART. Who do you call detectives?

Mr. SLADE. Hammond and McCullaugh.

Mr. CARLIN. How many of those indictments have been tried?

Mr. SLADE. None, except David Slade, and after eleven days trial, with eleven hundred pages of testimony, his name was mentioned

twice, and then the Justice announced that he was sick and the trial suddenly ended.

Mr. CARLIN. Is that indictment still pending?

Mr. SLADE. They are all pending.

Mr. CARLIN. What happened to the indictment against the young lady and her sisters?

Mr. SLADE. Nothing was ever done.

Mr. CARLIN. Do you know why they were never tried?

Mr. SLADE. For the good reason—I am coming to that point; I will answer it in a moment.

Mr. DANFORTH. Is Mr. Safford in jail?

Mr. SLADE. No, sir; he is out on bail at \$7,500, although before his conviction Mr. Houghton would not accept his bail unless it was \$15,000; and after conviction we applied to the circuit court of appeals, and after a long fight they reduced it to \$7,500, when we got him out, and he is out on bail.

The CHAIRMAN. Who was the justice who tried him?

Mr. SLADE. Mr. Justice Hough.

The CHAIRMAN. Your idea is that Justice Hough was in this conspiracy?

Mr. SLADE. I will not say that, but I will say this, I am firmly of the opinion, gentlemen, that Mr. Justice Hough was talked to about this case, and he was familiar and his mind was absolutely prejudiced. His summation to the jury, where he attempted to laud Jim W. Osborne as a wonderful man in the community, and then connected this little girl with gang men, and not a single line in this case but will demonstrate to you how prejudiced his mind was. He permitted testimony in violation of the most fundamental rules of evidence, and hearsay, what Mr. Jim Osborne said to Mrs. Osborne at his house on the 19th of March, in our absence, and in the absence of everybody else, Mr. Justice Hough permitted a Miss Osborne and Mrs. Osborne and Mr. Wilcox to testify that Mr. Smith, who has never been found since, told Osborne that this little girl was a prostitute, and that he stayed with her. That is the testimony he permitted to go to the jury. This man had a wonderful trial in the trial of this action.

The CHAIRMAN. How do you account for this judge's conduct, unless you ascribe it to corruption—the conduct that you describe here?

Mr. SLADE. Gentlemen, it is humanly impossible. I am not philosopher enough to take this record and account for that, or anybody else's conduct. It is simply impossible to do it. Read the record for yourselves and judge as lawyers. There is only one way I can account for it, and that is the close connections of the entire staff; and that he knew this case from A to Z, so far as Jim Osborne's side was concerned.

The CHAIRMAN. Who represented the Government in that case?

Mr. SLADE. Wood, Hershenstein, and Marshall. Mr. Justice Hough, after the conviction, brought in Safford. He gave him nine months. If this man was guilty of perjury, and he was a dastardly liar, he only gave him nine months on the island, and he told them, "You are only a cog in a big wheel." We immediately challenged Justice Hough at his own chambers, "What do you mean by cog in a big wheel?" He said, "Gentlemen, I did not mean you." But I

will show you what he is doing since then, to make it plain to you that he means us as well as everybody else.

We were not through. Another effort was made to get Slade. We are charged with attempting to change one of these records, after Mr. Hough signed it, and they had had it in their possession for six months. We can not get a trial by jury in that case; we can not get a trial by fair individuals in that case.

Mr. CARLIN. Was that contempt proceedings?

Mr. SLADE. I don't know. It is an ex parte proceeding, and they want us to go down and give them the information. I will tell you, gentlemen, that in this last proceeding, in which they are making an effort to show that some of the Slades have changed this record, if they take the stand and testify to what the district attorney's office claims they will testify, I will prove beyond a human doubt that it is perjury. He can not prove that the record was touched or in any way interfered with from the time he signed it up to the time it reached the office of the United States district court. But they are summoning us and subpoenaing us to come down, under the guise of investigation by the court, to give testimony against ourselves, so that they can accomplish that without our having had an opportunity for cross-examination, and in that way get Slade & Slade. They have not got us, and when that proceeding comes on I will take care of it.

Mr. DANFORTH. What was the charge?

Mr. SLADE. When this record of Safford was presented—this is known as the bill of exceptions; that is, the testimony taken in the trial is known as the bill of exceptions. You take the testimony as given to you, and if you think the thing requires amendments, or that things have been left out, you simply make the corrections in the testimony. You then give notice of settlement under the district attorney, and serve him with a proposed copy of this; and the record will be submitted in that form to be settled.

Mr. VOLSTEAD. A copy of the proposed case?

Mr. SLADE. A copy of the proposed case, and known as the bill of exceptions. That is what was done in this case. This was brought on us in our own trial, and we had fifteen stenographers working to try to get this out, because we were limited to the 21 days, and it had to be done peremptorily. Why it had to be done I do not know, and I do not care. This thing was sent to Judge Hough, and he refused to sit, but he went to Vermont instead. We were forced to take the car, because we could not make the train connections in time to get down there Sunday morning.

Mr. NELSON. Where?

Mr. SLADE. Where he was sitting. He then sends it back to the United States court. I think it was the 28th or 29th day of July. Mr. Slade, jr., did not get back to New York until the 30th, or from the time it reached New York up to the present time it has been in the possession of the United States court, and yet they come in now and say there are certain pencil notations in there which the district attorney claims was not there when it was submitted to Judge Hough, because Judge Hough does not remember them.

I may say that the record submitted to him had five or six hundred changes in the handwriting, because in correcting the minutes these girls were hurried and they were making mistakes. Those pencil

notations were there, but, as we stated in the argument, "We do not care whether you permit them to stay in the record or not." We wanted this case argued. It was on the calendar, and it was the morning of the argument of the case when they came down and said, "We are not satisfied. We want the record remitted." And they charged us with attempting to falsify the record.

Mr. CARLIN. What about the indictment against the females? What has been done about those?

Mr. SLADE. Nothing. There never will be anything done, because they can not prove anything.

I am coming to a point now, in answer to your question.

After the indictments were obtained against the girls, a man named Speildburger came into the case. He represents the Illinois Surety Co. He gave bond for this little girl for \$5,000. She was the plaintiff in the suit, Rae Tanzer. Then, this time her employer gave bond unknown to us, and nobody could find out why or who gave the bond, but, suddenly, on the day of the hearing, he withdrew his bond, because he said they had discovered who he was, and they were getting him into a lot of notoriety in the newspapers. When Speilberger got hold of this little girl, an important point was reached in this case. This little girl—and this was brought out in the Safford case, because this is the first information we had of it—Speilberger made arrangements with Mr. Marshall's office for us to bring this little girl down there. After her sisters are indicted, her lawyers indicted, she is indicted, and they told her what they were going to do with us, that they would send us up to State's prison and get rid of us. After a torture of several hours she finally agreed, as she said, to tell them that she thought she had made a mistake in Jim Osborne, and she was given to understand that everything against her would be dropped. She refused to sign that statement, and refused to swear to that statement, although every inducement was made to her to do so. She says, "I will make it orally, and that is as far as I will go, but I will sign no affidavit, nor will I sign any statement."

An effort was made to induce the two sisters to make that statement. They told them, "No; we have testified to the truth. The man has eaten at our house. He has spoken to us. He visited our house. It is Jim W. Osborne, and you can not make us tell any different, I don't care what happens to us."

In the Safford trial, when this little girl was called by us as a defense witness, because she was in the hands of Speilburger—we were no longer counsel after we were indicted, and Speilburger asked to be substituted in our place. We gladly gave him the papers and told him if he was going to defend this little girl that he could do what he pleased with them.

Mr. CARLIN. Was that done with her consent?

Mr. SLADE. Yes; since she went with him to the district attorney's office, he is recognized under the procedure of our State as being her attorney of record. In other words, he asked us whether we would consent, and we told him we would, since she was now in his possession, and we gave him written substitution of that fact.

He immediately discontinued that case the next morning, and here is the most remarkable thing about it.

Mr. NELSON. Who is "he?"

Mr. SLADE. Speilburger—discontinued the civil action in the first court.

Mr. DANFORTH. The breach of promise suit?

Mr. SLADE. The breach of promise suit, without our consent. We could not control it, he being the attorney of record, whether his client consented or not, as that is the procedure under the law of New York.

Mr. CARLIN. He could not have been the attorney of record without the consent of the client?

Mr. SLADE. I said that.

Mr. CARLIN. And he became her counsel?

Mr. SLADE. Yes, he became her counsel.

Mr. CARLIN. By her consent, and you were ousted by order of the court?

Mr. SLADE. No, by consent. We can not be ousted without her consent. She wanted it, and we did that.

This man was called before the grand jury, her counsel, and he testified before the grand jury. Of course what he testified I can only surmise.

Mr. GARD. Was this civil case against Osborne tried?

Mr. SLADE. No, that was discontinued by Speilburger.

Mr. GARD. When you say "discontinued," do you mean it was dismissed?

Mr. SLADE. No, discontinued; withdrawn by consent between the girl and Mr. Jim Osborne.

Mr. GARD. Does that withdraw it from the court?

Mr. SLADE. Withdraws it from the court by written consent to both Mr. Osborne and this little girl.

Mr. CARLIN. It was nonsuited?

Mr. SLADE. No, not a nonsuit, as in New York that only takes place after evidence is offered. This is by consent, withdrawal; that case was just the same as if it had never been brought.

Mr. NELSON. It is a voluntary withdrawal by the plaintiff?

Mr. SLADE. A voluntary withdrawal by the plaintiff.

Mr. NELSON. Not disbarred?

Mr. SLADE. It must be disbarred.

Mr. NELSON. Not to bring it again?

Mr. SLADE. Just to withdraw, not any disbar.

Mr. HILL. A discontinuance?

Mr. SLADE. You can not discontinue unless you get an order from the court with full payment of costs. You can not voluntarily discontinue without the consent of your adversary.

Mr. HILL. Have you such a thing as dismissal for cause?

Mr. SLADE. A dismissal may be had after the case has been calendar and a motion is made by notice to the other side for failure to prosecute; then a dismissal may be had, but that is with penalty following full bill of costs.

Mr. CARLIN. Who paid the bill of costs in this withdrawal of the suit?

Mr. SLADE. No costs were paid, because it was discontinued by consent, without costs to any party.

Mr. CARLIN. Without costs to both sides?

Mr. SLADE. Without costs to either side; they both consented that the case should be withdrawn without cost.

Mr. TAGGART. In New York each one pays his own costs?

Mr. SLADE. Yes, sir.

The CHAIRMAN. All right; proceed.

Mr. SLADE. I was at the stage, gentlemen, where the supposed statement was made by Miss Tanzer. In the trial of the Safford case we called Miss Tanzer as a witness, and we were confronted with this situation: Since she was in the hands of Spedberger and declined to answer by advice of counsel in that it might tend to incriminate her.

We examined that little girl for three and a half hours, and she finally told her story complete, the same that she told to us when she first came to our office and put it in the affidavit form, with the details, but she would not say—announced that Jim Osborne was known to her as Oliver Osborne, although she identified the picture she sent to him in one of the letters as Jim Osborne. When we appealed to the court, since she had opened the door, we went up to the point of this direct question. The court said, "She does not have to answer, because of her constitutional rights." When we turned her over for cross examination to Mr. Wood, Mr Wood was certain that this little girl, apparently by prearrangement, was going to say it was Oliver Osborne, and not Jim Osborne, and he put this question: "Do you mean to tell this court, Miss Tanzer, that the man who went around with you in the city of New York during the period you say was Oliver Osborne?" She said, "Oliver Osborne." "Will you say that this Mr. Jim Osborne was Oliver Osborne?" She walked right to Mr. Jim Osborne in open court and said, "I will say it, and I will swear it, and it is God's truth." That is the story she told in open court.

Mr. HILL. On cross examination?

Mr. SLADE. On cross examination by the United States district attorney.

And when Wood then proceeded to take the statement, unsigned and unsworn, and he said, "Did you not make such and such a statement in my office?" she appealed to the court and said, "Your Honor, permit me to state the circumstances, the conditions under which I made it, and let me make the whole statement." And the court stated to her, "Falsity is falsity; I will deny your right. Answer the question." She finally was forced to answer and make the admission and statement. We then appealed to the court to compel the district attorney to turn the statement over to us so that we can introduce it in evidence. That was denied. We then asked permission of the court to let us read it to the jury, and that was denied; we then asked permission of the court to let this little girl tell her whole story, and that was denied. That is the condition with which we were confronted with this little girl.

I am only giving you a brief outline. I could stay here for a month and in detail point it out to you.

Mr. TAGGART. Did Osborne take the stand?

Mr. SLADE. Yes.

Mr. TAGGART. Did he contradict the statement?

Mr. SLADE. He did not. He attempted to show that he did not know this little girl. The record, if you will read it——

Mr. TAGGART. In what proceedings was it that Miss Tanzer identified him?

Mr. SLADE. In the Safford trial, and before Commissioner Houghton, the two sisters took the stand and swore that Jim W. Osborne was the man, and that there could be no doubt about it.

Mr. CARLIN. Did they testify, the two sisters?

Mr. SLADE. Yes.

Mr. CARLIN. What did they testify?

Mr. SLADE. That Jim Osborne was the man known as Oliver Osborne.

Mr. HILL. You started to say something about this new attorney being called before the grand jury the day after he was employed?

Mr. SLADE. Yes. I have since that made every human effort to find out what he could possibly be called to the grand jury room for, and I have got enough to satisfy me as to what he did actually say, that this girl has both in handwriting and in a hundred different other ways, by every human being that has examined her, testified as to what the real facts are, and that she told the district attorney's office that the man she knew was Jim W. Osborne; that she told the same story to Max Steuer long before we were engaged, and at his suggestion, to make sure, she went down to 115 Broadway and waited for Mr. Osborne to come out of the office, so there could not be any question of her identification, and she so notified Steuer. She told the same story to Gruber, and then he testified in a statement before the district attorney that she stated she thought he is mistaken.

Here is the way she accounts for the mistake: I do not know whether you gentlemen ever saw Mr. Jim W. Osborne. When he appeared before the commissioner—when he used to meet this little girl he appeared in clean clothes, clean collar, respectable gentleman, and carried out the part he played—but when he appeared before the commissioner he had on an old seedy looking suit and a dilapidated looking hat, and he sat on the chair in this fashion [illustrating]. I am not exaggerating; that is the picture he presented throughout the entire trial, and she told it to him in court. She said, "He is the greatest actor I ever saw in my life."

But to bring it back forcibly, that it may strike you, I will call your attention to an incident known as the "Keiser incident." Miss Keiser was a girl who was married and had a baby, and had been married eight or nine years. She appeared at our office during the time of this investigation, at about 4 o'clock or half past 4, and when I came back from court she said, "I desire to see one of the Mr. Slades." She was ushered into my room, and she told this story: She said, "I had the same man do the same thing to me." I said, "How can you prove that fact, and how do you know this is the case, and where did you get the information?" "Why," she said, "The newspapers are full of it. The picture that was published is Jim W. Osborne; and to prove that to you, I have brought a letter"; and she took the letter out of her bosom. My suspicions were aroused, because she did not appear to me the type that could talk to me and tell me a story of that kind without any hesitation or blush. I asked her a few questions, and I said to her, "I will not take your statement to-day. My stenographer has gone for the day. You come back here to-morrow, and you bring with you your brother, your mother, your friend, and anybody else whom you say ever saw that, and give me all you have to say in writing under oath."

It has been our system in New York to take the statement of no human being, where the United States court is involved, unless the man or witness comes into our office and signs an affidavit under oath, and with respect to every person with whom we had any dealings in this case we have his affidavit under oath, sworn to before a commissioner, so that any statement which he may make afterwards is absolute perjury, and nothing more. That is the only way we can do business in New York, and that is no longer safe [laughter], because in the instance of Mr. Darling, the Darling who gave us the affidavit, and you will find this in the record where he said, "When I made that affidavit my memory was clear. What I testified was the God's and gospel truth," and that day on the witness stand he made a correction by sticking the word "not" in, and finally he admitted it was not in there. That man was kept in the Tombs five and a half weeks as a supposedly material witness. He was no more material for that than I was, because his affidavits say just the contrary of what they hoped would be said.

I am coming back to the Keiser incident, gentlemen. I had suspicions, and I knew that this was a scheme, because every day people would call on the telephone and try to have a conversation, and in tracing the wire we found other people were listening, and that these burns would continually be sent to our office.

I asked her, "Will you be good enough to leave this letter?" And she said she would. I said, "Where is the envelope?" And she said, "The envelope has disappeared." "Have you any other letters?" "Yes; I have two more." "Where are the envelopes?" "The envelopes are gone." She had only letters.

Before she left she said, "Do you mind showing me a picture of Jim W. Osborne?" I asked one of the clerks to get it out of the safe. She was sitting there with her friends. Upon being shown the photographs she said, "Oh, yes. There is no question, but I never saw him with a collar on like that; that is, he never wore a wing collar—the Oliver Osborne when I knew him."

Her friend then said, "Let me see the picture, Kitty." She took that picture and she put her hand over part of it, covering the collar and said, "Now, can you be mistaken?" "There can not be any mistake. Look at that dimple. You can not mistake it," and Kitty said, "Yes; you are right."

When she left the office, we traced her. She went right over to the United States district attorney's office, and, to our great surprise, the next morning we heard that Kitty Keiser appeared before the grand jury, where she attempted to state that, "I was down to Mr. Slade's office. He showed me a picture, and I told him it was not the Oliver Osborne I knew," and yet, on cross-examination, her friend in the trial of the Slade case, on page 512, makes this statement—

The CHAIRMAN. In the trial of the Slade case?

Mr. SLADE. In the trial of the Slade case. Here is the cross-examination of this friend. The question was asked, on cross-examination [reading]:

"Q. Let me ask you and see if I can refresh your memory. You say you have a rather bad memory anyhow. See if I can help you on it. Don't you remember Mr. Maxwell Slade handed the picture to

Miss Keiser, and she looked at it and she said, 'Yes, that is the man, except that I never saw him in such a collar?'

"A. She did say it."

That is her testimony, and yet they took her before the grand jury, and she tells you how she was first sent over to the Osborne office, how the Osborne crowd first talked and combed her down. Then she was sent over to another attorney. Then they took her over to the United States court, and they submitted her to Inspector Wilcox, an associate in the office of Marshall, and when he got through then they hustled her into the office to tell her story. They did not stop there.

Mr. TAGGART. Did she say they sent her to your office?

Mr. SLADE. No, but the evidence and the facts are these: I was the next morning subpoenaed to appear before the grand jury. I am coming to that.

There is no case tried in the city of New York, gentlemen, for any crime except the crime of conspiracy. The department of justice in the district of New York knows no other crime in existence except conspiracy. In the guise of conspiracy, anybody's name which is mentioned will be indicted unless he is a close friend of the crowd inside. Then anything and everything is admissible, irrespective of by whom stated or the circumstances under which it was said; and then they began to comb down those they think they can control to make such statements as they want to permit and those they do not want.

That is the only crime we know, conspiracy. They could not individually charge any human being with doing any specific act of any kind, character, or description, which can by the most boundless stretch of human imagination be considered a crime by any law in any place in this world but under the guise of conspiracy. As the record will show you, Mr. Justice Russell, permitted testimony of what an inspector said to John Smith when somebody else called John Smith; when Mrs. Jones called somebody else something; and his only ruling was "Subject to correction." We stayed there for 11 whole days in the trial of this action, and not a single word was ever uttered, so far as the Slades are concerned, except this: One reporter took the stand and he said: "I saw Mr. David Slade bend over the chair of his client and whisper to her." That is a crime in New York to have a lawyer whisper to his client. The next reporter said: "I heard Mr. Slade say to his client before Commissioner Hough, when Mr. Osborne came in and everybody was expecting Osborne, and the crowd was there, 'Here he comes.'" They charge that up as a crime against Mr. Slade.

Those are the only two instances where the name of Slades were mentioned, after 11 days' effort on the part of Marshall to show that, in fact, some man did exist whose name was "Oliver Osborne," and here is the way they attempted to prove it:

On March 19, 1915—March 19 seems to be the vital day in this whole case—everything that transpired in the heart of the United States district attorney—the creation, by some conception, human—I do not know by what—of this Mr. Oliver Osborne at the office of Jim Osborne, and he said, "I am Oliver Osborne; Mr. Osborne is not in yet; he is home." They called him on the wire at the hotel,

and this is what Osborne testified; the first words he said: "Please do not leave town until you see me."

How could he know that this man was going to leave town? But, he follows it up. He said somebody told him he was down at this hotel. "You can go down," and he was supposed to have walked into the house of Jim Osborne, and his wife and Wilcox were present; and there he told this story, and he said: "I came to New York last night from Boston, and I stopped at Brooklyn, and I wrote the letter last night, and here it is. I sealed it up, and I put the stamps on it, and then I changed my mind and I thought I would come personally to-day." And the day he was supposed to have been there was the 19th of March, 1915. And then he described that he used to stay with this girl; that he was Oliver Osborne; Jim Osborne was an honest man. And, what did he say to Osborne? He promised to come back, and "I didn't think to require anybody to look after him, and he left," and that is the last any human being ever saw of him. When you simply investigate and examine this letter, which was supposed to have been written on the night of the 19th, you will find it is dated "19th day of March, 1915." You will ask, "How can you account for that?" By this significant fact: Mr. Wilcox said he saw this Oliver Osborne in the office of Jim Osborne on the morning of the 19th, and he heard this man talk to Mr. Osborne. "What did you do." "I ran to the safe to get the Oliver Osborne letter." Just bear that in mind, he ran to the safe to get the Oliver Osborne letters.

How did Jim Osborne know or could have gone to his safe to get any letters addressed to Oliver Osborne?

I will tell you how. This little girl testified that one letter, which is now in evidence, and which letter Mr. Jim W. Osborne claims was a letter given to him by the other Osborne. Mr. Osborne claims this letter was delivered to him on the morning of the 19th by this other Oliver Osborne. There is an affidavit on record which was filed by Mr. Osborne, on the motion for the bill of particulars, which I referred to. In that affidavit Mr. Osborne swears an intimate friend of his, Mr. Howley—by the way, we can not find him either—he disappeared—went to see this little girl in February, gentlemen. That was one month or five weeks before we came into the case; and at that time Mr. Howley, in connection with his friend, asked this little girl to turn over to them all of the letters which she claims she had from Jim W. Osborne. So, we trace them to away back in February, making the demand of that little girl. This little girl said in her statement with reference to that, "When they told me that, I asked them how do I know that you come from Jim W. Osborne's office," and they answered to her, "We will prove it to you. Here is a letter addressed to Oliver, that you personally delivered to Jim, and that was the same letter that he claims he got from this other Oliver Osborne. This was away back in February, but at the time she gave it to Mr. Jim W. Osborne and at the time Howley showed it to her it had the envelope, which she described as a blue envelope with five stars and the name of her employer scratched out, and her initials. When it is produced by Jim Osborne he said, "The man did not give me any envelope; he just gave me the letter."

Mr. NELSON. She knew him; did she say "That is Oliver Osborne."

Mr. SLADE. Yes; until she found out he was Jim W.

Then she wrote letters to him at the athletic club, addressed "Jim W. Osborne." She sent him his picture. This was months before we came into the case. She went down to his office to see him.

Gentlemen, I will take up another branch. I am only giving you a brief outline, so that you can see the condition that existed.

Mr. CARLIN. Why did she appoint other counsel and dismiss you?

Mr. SLADE. She did not dismiss us.

Mr. CARLIN. In effect, it was a dismissal.

Mr. SLADE. When she was arrested in the criminal proceedings, she asked us to get the bond. We told her we could not; that our duties were as lawyers; that we could not supply bond unless she gave collateral. She did go to jail and spent 48 hours. Finally her employer came to her rescue and gave a bond. Then every human effort was made to discover who gave the bond, and they finally got it, and the notoriety of this man was so great that he called up and said, "I am sorry, I will have to take my bond off." She then went to jail.

We pleaded with Spielberger to get him to give the bond. She turned over \$800 to Spielberger and he said that was not enough, and after declining with us, secretly with us, he went down and got her out on bond, and we did not see her for four or five days, until we were notified that something was going to be touched off.

And they have had that little girl, as the newspapers and the reporters say, down to Atlantic City daily, living with Spielberger, enjoying trolley rides, automobile rides, dinners, and suppers, and living like a lord, and then naturally she changed the testimony and told what the truth was. During that period he has got her in custody, since he gave the bond, since she was in fact his prisoner until such time as she is released. He had given the bond and he ought to have charge of her affairs, and we were asked would we consent to a substitution, and we did.

Mr. CARLIN. Who do you refer to by that?

Mr. SLADE. Mr. Spielberger, in New York. I do not want to say anything against him, gentlemen, except to say this, that Mr. Spielberger in New York is connected with giving bonds for all the gang men.

Mr. IGEE. Did I understand you to say you went to get him to give the bond.

Mr. SLADE. We did.

Mr. NELSON. After that he became her attorney?

Mr. SLADE. Yes.

Mr. CARLIN. He refused to give the bond on your request?

Mr. SLADE. Yes. They had \$800 in the family and they took that in to him, and he gave bond, and that is how we came to get out of the case. Since he was interested in her he felt it was his business to look out for her.

Mr. CARLIN. How did the client feel?

Mr. SLADE. Under the circumstances she was his client and could not do any differently, otherwise he would surrender her and she would stay in jail.

Mr. DANFORTH. How much was the bond?

Mr. SLADE. \$5,000, and the bond in the Safford case was at first \$15,000.

If we get permission I am ready to try that case. We will submit our case to any judge or jury under fair circumstances, and we hope some day to try the case.

Mr. TAGGART. Getting around to the exact case, we are not investigating Jim Osborne.

Mr. SLADE. I am showing the conditions.

Mr. TAGGART. Coming to the point where the district attorney, if he had anything to do with the machinations of Osborne and his method of getting out of that scrape, do you say he was in it? Give us that.

Mr. SLADE. I have given you the Le Gendre incidents.

Mr. TAGGART. Was the making of that picture a crime against the United States?

Mr. SLADE. Yes.

Mr. TAGGART. How?

Mr. SLADE. Why, because it was a conspiracy between myself, Slade, jr., and Le Gendre to manufacture a fake picture to be used in some Federal proceedings to be instituted by the United States.

Mr. TAGGART. They never indicted you for that, did they?

Mr. SLADE. Yes; they certainly did. That is recited in the indictment as one of the overt acts.

Mr. TAGGART. Now, you say Mr. Marshall, the district attorney directed them to go and get that picture?

Mr. SLADE. Mr. Marshall and Mr. Osborne, and Mr. Le Gendre makes the statement to us and is ready to swear to that effect.

Mr. CARLIN. Is Le Gendre here in town?

Mr. SLADE. No; he is not; but he will be ready to come here.

Mr. CARLIN. Is he still employed by the "World?"

Mr. SLADE. He is, sir. Take the statement of Mayhew, and connecting that with the subornation of perjury, at the instigation of the district attorney, in order to get Saffors and apply jurisdiction over him.

Mr. IGOE. What was the name of the post-office inspector who made the affidavit that he had been told to say certain things?

Mr. SLADE. That is Mayhew; I will read his testimony.

Mr. IGOE. I just wanted the name.

Mr. SLADE. Mr. Mayhew—I will give you his correct name.

Mr. NELSON. Is that his testimony there?

Mr. SLADE. It is his testimony under oath.

Mr. NELSON. He said that Mr. Wood told him to do this?

Mr. SLADE. He said that Mr. Wood told him to do that.

Mr. IGOE. Do you know if that man is still in the postal service?

Mr. SLADE. He is.

Every statement is supported by sworn testimony. Here is his testimony on cross-examination. [Reading.]

Q. Mr. Mahew, you made an affidavit on the second day of April, didn't you, before Commissioner Houghton, in which you swore to a complaint charging Mr. Safford with the crime of perjury?—A. Yes, sir.

Q. Who told you to make that affidavit?—A. I think I had some conversation with Mr. Wood about that.

Q. Did he tell you to make it?—A. I think it was made by his request or his suggestion.

Q. You did not know Safford before the trial, did you?—A. Never had seen him.

Q. Or Rae Tanzer?—A. Never.

Q. Or James W. Osborne?—A. I did not know him until this case commenced.

Q. Did you know anything about the facts concerning the civil suit brought by Rae Tanzer against James W. Osborne?—A. Only what I had read in the paper.

Q. Do you know anything about the merits of that question?—A. Not a thing.

Q. Do you know anything about the circumstances which took place out at Plainfield, N. J., at the Kensington Hotel?—A. Nothing at all.

Q. Do you know anything about the two persons who went at that time on the 18th of October, 1914, and registered under the name of O. Osborne and Mrs. O. Osborne?—A. No.

Q. Is this the affidavit or copy of it, that you swore to [handing witness paper]?—

A. I assume it is; I am not familiar with it; I don't know.

Mr. LITTLETON. I ask to have it marked for identification.

(Marked "Defendants' Exhibit P," for identification.)

Q. Did you not say in your affidavit in this complaint and did you not swear to it—

Mr. Wood. I object. I object of the court, please, to reading anything from that affidavit unless it is offered in evidence.

Mr. LITTLETON. I offer it in evidence.

Mr. Wood. No objection.

(Marked "Defendants' Exhibit P," in-evidence.)

Q. Did you not swear in this complaint that the said Frank D. Safford did further declare, depose, and swear that he assigned James W. Osborne to room 15 in the said Hotel Kensington on the said 18th of October, 1914?—A. Assigned a man that he identified as James W. Osborne.

Q. I say didn't you swear to that? I am reading you the affidavit now.—A. My signature is on the original of that. I swore to it.

Q. Didn't you swear to this: "That whereas in truth and in fact the said Frank D. Safford then and there well knew that the said James W. Osborne was not the man who accompanied the said Rae Tanzer to the hotel in Plainfield, N. J., on the said 18th day of October, 1914, and the said Frank D. Safford then and there falsely, corruptly, willfully, and did declare and depose and swear to that which was not true?"—

A. Yes.

Q. And then didn't you swear to that yourself at the bottom?—A. Yes, sir.

Q. And didn't you do that under the direction of Mr. Wood?—A. Yes, sir.

Mr. LITTLETON. That is all.

Mr. STEELE. Was that testimony upon his own knowledge, or under his information and belief?

Mr. SLADE. Absolute knowledge, and he said he knew nothing about the persons and conditions, and yet he charges this man with committing perjury.

Mr. STEELE. Just prior to that, when he was asked whether he did that by direction, he said he made the affidavit at the suggestion of Mr. Wood.

Mr. SLADE. By direction.

Mr. STEELE. Or at his request?

Mr. TAGGART. After conference.

Mr. CARLIN. Does he anywhere state that the affidavit which he previously made was false?

Mr. SLADE. This is the only affidavit he made.

Mr. CARLIN. Does this say anywhere there—

Mr. SLADE. The question was asked, and it was overruled, yet he characterized whether it was false. The court said, "He has told you he knew nothing."

The CHAIRMAN. Have you a copy of the affidavit?

Mr. SLADE. Yes; it is in the record.

The CHAIRMAN. Can you turn to it, so the committee can see it?

Mr. SLADE. Yes.

Mr. CARLIN. What I am trying to arrive at is—I could not follow it as closely as I might—what is the conflict between the affidavit and his testimony on the stand?

Mr. SLADE. The conflict is simply this, that in the affidavit he charges, as I have just read, that Safford willfully, corruptly lied and

perjured and swore false, and that he knew Jim W. Osborne to be the man who stopped at this hotel on a certain day, and yet now he swears under oath to the fact that at the time he swore to the affidavit he did not know the parties, that he did not know the facts, that he did not know the circumstances, and did not know anything about it, because Mr. Wood told him to do it.

Mr. WILLIAMS. This affidavit was used as the basis upon which to procure the arrest of Safford; that was the purpose of this affidavit, in the nature of a complaint, upon which the warrant was issued?

Mr. SLADE. Yes, sir.

Mr. WILLIAMS. To cause his apprehension?

Mr. SLADE. That is the only way they could get into court.

Mr. WILLIAMS. And then subsequently indicted him on other testimony?

Mr. SLADE. The same testimony.

Mr. WILLIAMS. You do not mean to say he was indicted on the strength of the affidavit.

Mr. SLADE. No; but he testified before the grand jury, this same man. The other inspector testified, and the only testimony he gave in the trial is that he saw Mr. Safford come in before Mr. Houghton, and he heard him talk to the man who was with him.

Mr. TAGGART. That is not exactly it. What was the exact use made of that affidavit, where filed, and what was done with it?

Mr. SLADE. It was for the purpose of bringing Mr. Safford within the jurisdiction of the United States by arresting him and bringing him before Commissioner Houghton and putting him under \$15,000 bond, and then attempting to sweat him, to get him to change his testimony.

Mr. IGOE. What did this inspector testify to on direct examination, if he did not know anything about the facts?

Mr. SLADE. I will read it to you.

Mr. CARLIN. Who summoned him, the Government?

Mr. SLADE. The Government.

Mr. TAGGART. Just before you begin reading, now—he made an affidavit that this man Safford had perjured himself?

Mr. SLADE. Yes, sir.

Mr. TAGGART. And took that affidavit to the United States commissioner. Where did he take it to, where file it, and what did he do with it?

Mr. SLADE. Swore to this affidavit and delivered it to Mr. Wood, and Mr. Wood went down and had a warrant issued by Commissioner Houghton, and upon that warrant he was arrested and put in the Tombs, where he stayed six weeks.

Mr. CARLIN. This same post-office inspector, when put on the stand and cross-examined in the Safford trial, tacitly admitted that he perjured himself?

Mr. SLADE. Because he knew nothing about it.

Mr. CARLIN. Has he been indicted?

Mr. SLADE. No.

Mr. TAGGART. If that statement in the affidavit was true, no matter whether he knew it was true or not, he would not be guilty of perjury, but have you evidence that it turned out that the statements in the affidavit were not true?

Mr. SLADE. I will answer both of your questions, sir.

The perjury charge—perjury consists, if I may answer the gentleman's question—you have no right to swear to that which is true, if you have no knowledge, nor can you swear to something which is false, if you have no knowledge. You are just as guilty of perjury if you swear to a fact which is true as if you swear to a fact which is false; and when he was ordered to swear to this affidavit, under his own testimony, he committed perjury, and Mr. Wood is guilty of subordination.

Mr. STEELE. You have a copy of it? Let me see it.

Mr. CARLIN. And that the subordinate in Mr. Marshall's office was guilty of subordination?

Mr. SLADE. Yes, sir.

Mr. CARLIN. And that neither of those men were indicted?

Mr. SLADE. No, sir. This testimony was in the presence of Marshall, so that he knows of these facts.

Mr. NELSON. Does it appear in the testimony at all that Wood and Safford were acquainted before this?

Mr. SLADE. Never saw him and never heard of him; not a single person was known until Jim Osborne went in there and asked them to be known.

Mr. TAGGART. Is there a United States statute that makes it perjury to make an affidavit and leave it with the prosecuting officer?

Mr. CARLIN. The definition of perjury is swearing to a matter falsely.

Mr. STEELE. Is that the original copy of the affidavit?

Mr. SLADE. It is marked "Exhibit P" here in evidence. I will find it for you in a minute. I think my brother has it outside. Will you ask Mr. Slade to be good enough and find the affidavit of Mahew. I think it is "Exhibit P."

Mr. CARLIN. Mr. Slade, there is confusion in the minds of the committee. Was this affidavit of the post-office inspector before the United States commissioner who issued the warrant that committed Safford?

Mr. SLADE. Yes. This affidavit was before the commissioner, and it is upon this affidavit that the warrant was issued, and it is upon this warrant that Safford was tried and brought into court and placed under bond.

Mr. IGOE. Mr. Slade, who took this affidavit to the commissioner and had this warrant issued—what official?

Mr. SLADE. Mr. Wood.

Mr. WILLIAMS. Who administered the oath?

Mr. SLADE. Mr. Wood or Mr. Hershenstein.

Mr. IGOE. Will you tell us what this man testified to in this trial?

Mr. SLADE. Yes; I will be glad to do that.

Mr. CARLIN. What we are trying to get is, whether this affidavit was before the commissioner that issued the warrant that committed Safford for trial.

Mr. SLADE. That is the warrant, and the only affidavit upon which the warrant was issued, and upon which he was arrested and held under \$15,000 bond.

Mr. CARLIN. And your idea is that he was guilty of perjury?

Mr. SLADE. His own testimony shows me it was false, when he made it, and they could not have arrested him until the indictment

was issued. They could not have charged him with anything else until they actually charged him with some crime.

EXHIBIT No. 8, JANUARY 17, 1916.

Affidavit of Howard B. Mayhew, post-office inspector, upon which warrant was issued and Safford was arrested, charged with perjury.

Defendant arraigned, bail \$12,000, hearing adjourned to the 9th day of April, 1915, 2 o'clock p. m.

Dated, New York, April 5, 1915.

C. S. H.,

United States Commissioner, Southern District of New York.

Approved:

ROGER B. WOOD,
Assistant U. S. Attorney.

Before Hon. Clarence S. Houghton, U. S. Commissioner for the Southern District of New York.

UNITED STATES OF AMERICA *v.* FRANK D. SAFFORD.

Complaint: Violation No. 125 U. S. C. C.

SOUTHERN DISTRICT OF NEW YORK, ss:

Howard B. Mayhew, being duly sworn, deposes and says that he is a post office inspector employed in the Post Office Department of the United States Government.

That on the 25th day of March, 1915, he was present at a hearing held in room No. 227 of the United States courthouse and post-office building, in the city and county of New York, in the southern district of New York, before Hon. Clarence S. Houghton, United States commissioner in and for the southern district of New York;

That at that time there was pending before the said United States commissioner a hearing in the case of United States *vs.* Rae Tanzer, charged with having used the mails in a scheme to defraud, in violation of section 215 of United States Criminal Code;

That the said Hon. Clarence S. Houghton, United States commissioner, was duly authorized and empowered to administer oaths and affirmations;

That during the said hearing one Frank D. Safford was called as a witness on behalf of the defendant, Rae Tanzer;

That the said Hon. Clarence S. Houghton, United States commissioner, thereupon duly administered to the said Frank D. Safford an oath;

That the said Frank D. Safford did then and there declare, depose and swear to tell the truth, the whole truth, and nothing but the truth;

That after being sworn as aforesaid before a competent tribunal by an officer authorized by the laws of the United States to administer an oath, the said Frank D. Safford did declare, depose and swear that he had seen James W. Osborne, of New York City, at the Kensington Hotel in Plainfield, New Jersey, on the 18th day of October, 1914, and that the said James W. Osborne whom the said Frank D. Safford pointed out and designated in the presence of the said commissioner and after the said Safford had been sworn, had registered at the said Kensington Hotel in Plainfield, New Jersey, on the 18th day of October, 1914, under the name of Oliver Osborne, and that the said James W. Osborne was accompanied by a woman who was then present and who was identified and pointed out by the said Safford as the woman who accompanied the said James W. Osborne to the said Hotel Kensington on the said day;

That the said Frank D. Safford did further declare, depose and swear that he had assigned the said James W. Osborne to room No. 15 in the said Hotel Kensington on the said 18th day of October, 1914.

Whereas in truth and in fact the said Frank D. Safford then and there well knew that James W. Osborne was not the man who had accompanied the said Rae Tanzer to the Kensington Hotel in Plainfield, New Jersey, on the said 18th day of October, 1914; and the said Frank D. Safford then and there falsely, corruptly, and wilfully did declare, depose, and swear to that which was not true; that the testimony so given by the said Frank D. Safford was material to the inquiry then pending and undetermined before the said Hon. Clarence S. Houghton, United States Commissioner; against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided.

Wherefore your deponent prays that a warrant may issue for the arrest and apprehension of the said Frank D. Safford, that he may then and there be dealt with according to law.

HOWARD B. MAYHEW.

Sworn to before me this 2nd day of April, 1915.

[SEAL.]

C. S. HOUGHTON,
U. S. Commissioner, S. D. of N. Y.

MR. CARLIN. This man Wood, that you say committed subornation, was he employed in Osborne's office?

MR. SLADE. No; an employee of Marshall's office, but a very close and intimate friend of Osborne.

MR. CARLIN. And now assistant district attorney?

MR. SLADE. Now assistant district attorney.

Here is the testimony, direct, of Mr. Mayhew, that you gentlemen asked for. [Reading:]

Q. Now, Mr. Mayhew, what is your occupation?—A. Post-office inspector.

Q. How long have you been a post-office inspector?—A. Since 1906.

Q. Were you a post-office inspector in March of this year?—A. I was.

Q. Were you assigned by the post-office inspector in charge to the case of the United States against Rae Tanzer?—A. By the acting post-office inspector in charge.

Q. While you are assigned on a case what are your duties?—A. Investigate it and follow it until the investigation is completed and our report submitted.

Q. Look up the witnesses?—A. Yes; that is part of our duties.

Q. Now, Mr. Mayhew, do you remember the day of the hearing down here before Commissioner Houghton, on the 24th of March, in that case the United States against Tanzer?—A. I do.

Q. Had subpoenas been issued prior to that time for the witness Frank D. Safford?—A. There had.

Q. Do you know in whose hand that subpoena had been placed?—A. In one of the deputy marshals'.

Q. A deputy United States marshal?—A. Yes.

Q. Were you present when the subpoena was issued, Mr. Mayhew?—A. I don't—I have no recollection now, but I may have been and I may not have been.

Q. Now, were you here present in this room on that Wednesday afternoon when the hearing opened?—A. I think I was. I was in and out frequently. I don't know whether I was here just when it happened or not.

Q. Did you see the witness Frank D. Safford come into the court room?—A. I saw him come to that position [indicating].

Q. Where did you see him?—A. Probably about where the second bench is, I should say.

Q. Well, go down there and show us, Mr. Mayhew.—A. (Witness leaves stand.) Approximately here [illustrating].

Q. Where were you standing?—A. I was standing here [indicating].

Q. You say you saw the witness come in?—A. Yes.

Q. Had you never seen him before?—A. No.

Q. How did you know it was Safford?—A. Mr. Kitchen told me it was Safford.

And this Mr. Kitchen was the proprietor of this hotel where Safford was clerk and where this transpired.

MR. CARLIN. He was the first bondsman in the case, was he not?

MR. SLADE. Oh, no.

Mr. Kitchen, our inspector, interviews him before we brought the suit and filed our case, and his written report was in the office of the district attorney before we were indicted, showing that this man investigated the case and told us it was Jim Osborne—the admission made by Kitchen that he identified him. There was a letter written to us that he would send an affidavit, and that fact was not submitted to the grand jury. Then, Mr. Kitchen took the stand, after the United States district attorney got him in tow, and said, "I do not even remember the little girl." He testified to the condition the bed was in, that this dastardly act was committed, but that he did

not recognize Mr. Jim Osborne. That is the statement he finally made.

But to us in our report he not only identified him, but promised to give us an affidavit, referred us to his lawyer to get it, and said he would have it ready the next Monday morning, and we have a letter from his lawyer to that effect.

Mr. CARLIN. But when put under oath he could not identify Osborne?

Mr. SLADE. He said he could not tell the kind of a man he was, and yet he said he talked to him a half hour.

The CHAIRMAN. Do you find that affidavit?

Mr. SLADE. It is not attached to the record.

Mr. CARLIN. But Mr. Osborne was present when Kitchen was asked and said he could not identify him?

Mr. SLADE. No, he was not; and furthermore note the significance of Mr. Kitchen's testimony: He could not tell whether Jim Osborne had a diamond in here [illustrating] or whether he had a cane, or whether he wore glasses.

Mr. CARLIN. Did he know Jim Osborne?

Mr. SLADE. He said he never knew him, but to us he identified the picture shown to our investigator. In other words, before they got a hold of him and made arrangements to go to his lawyer, with whom we had a conversation, and a letter telling us why his client refused to give us an affidavit, for the reason that it might get him into a lot of notoriety in the newspapers.

Mr. GARD. Was McCullough ever tried?

Mr. SLADE. McCullough was tried at the same time with us, and this trial lasted 11 days, and then the judge announced his sickness.

Mr. IGOE. The Government did not finish its case?

Mr. SLADE. The Government had no case to finish. They spent 11 days introducing testimony.

Mr. CARLIN. Had the Government finished its case?

Mr. SLADE. Not quite, and I defy any man, a lawyer, to read this record. I point out, not only that Slade did not commit a crime, but not even a crime was thought of by any human being, because Slade's name is not mentioned.

The CHAIRMAN. Was that Judge Russell from Texas?

Mr. SLADE. Judge Russell of Texas.

The CHAIRMAN. Was he sick?

Mr. SLADE. I can not answer the question, except I am giving the testimony by the physician. My own investigation has shown me that Judge Russell is a very honorable man, a man whose integrity and honesty can not be questioned, and I have no means of questioning it, and do not propose to question it, except I am going to say this: That it was unfortunate, the conditions under which the trial terminated. At 1 o'clock the judge adjourned the case, and we were to take it up at 2 o'clock. At a quarter to 2, as we are informed, the judge went to his chambers, and a man was brought up before him for sentence, and he gave him 4½ years for having opium in his possession, and in five minutes after that the sickness was announced. Those are the circumstances.

Mr. CARLIN. Do you doubt that the judge was sick?

Mr. SLADE. No, I do not doubt the judge was sick, but I doubt the sincerity of the United States district attorney in refusing us the

permission to continue this case long enough for that judge to come out and finish it. And when we made the most solemn promise to bind ourselves to bring in another judge, let him read the testimony, that we would waive it, and "Let us try and finish this case out," and the district attorney did not want to do it.

Mr. CARLIN. What was the date of that trial?

Mr. SLADE. The date of that trial?

Mr. CARLIN. Yes.

Mr. SLADE. June.

Mr. CARLIN. What?

Mr. SLADE. June 25, 1915, it started, and it finished about July 11th, or 12th, or 13th.

Mr. CARLIN. Has the case ever been called on the docket? .

Mr. SLADE. It has never been called.

Mr. DANFORTH. That is *The United States v. Slade*?

Mr. SLADE. *The United States v. Slade*. I also have here the record of *The United States v. Rae Tanzer*.

Mr. NELSON. In the meantime you were advertised in the newspapers as being prosecuted?

Mr. SLADE. So extensively that I have letters from every part of the globe; there is not a nook or corner I have not letters from.

Mr. NELSON. You rest under that charge at the present time?

Mr. SLADE. Yes, sir.

Mr. NELSON. And you can not get it referred?

Mr. SLADE. We can not get it referred. We were down in Washington on another occasion. If you will take our records you will find where we have pleaded with the District court, the judges of the circuit court of appeals, everybody, to take this matter out and sift it to the bottom.

Mr. NELSON. Let me ask you one more sentence: Have you not offered to the district attorney whose office had charge of this trial that they could substitute any judge and go ahead; and you never took any exception?

Mr. SLADE. It is a matter of record. We have offered to do that. We have offered to be bound by the most solemn pledges that they bring in somebody else to read the testimony, because the trial was finished.

Mr. CARLIN. Do you think any judge or jury could try that case on this record?

Mr. SLADE. The jury was there; the jury was not charged. All we wanted them to consent to was to bring in any judge, let him take a week or 10 days or three or four days, read this record; let it stand just as it was, and let us finish the case.

Mr. CARLIN. Has there been a term of that court since last July?

Mr. SLADE. There have been four terms.

Mr. CARLIN. And the docket was called?

Mr. SLADE. The docket was called, but our case was not. There have been seven terms.

Mr. CARLIN. And the docket was called?

Mr. SLADE. Yes, it is called nearly every week.

Mr. CARLIN. And this case has never been called?

Mr. SLADE. We have never been notified that this case was ready to be set down, because they have control of the calendars. They

place only such cases on as they see fit. If they never want to try it, they never do try it; it is pigeonholed.

Mr. TAGGART. Will you not be entitled to a dismissal?

Mr. SLADE. I do not want dismissal. If I had wanted a dismissal in this case I could have gotten it in the beginning. We have been approached to stop through different subterranean channels, but we are not of the kind to stop. I would not stop if I had to persevere the rest of my days, because I am in this case under conditions that no human being can stand, and I want you gentlemen to consider the seriousness of this case. It is not alone I am involved. My whole future, all that are dear to me are involved in this case. We have been approached a hundred times to drop the proceedings and call it "quits." We will not do it, if we have to fight the thing ourselves.

Mr. CARLIN. Mr. Slade, you are entitled to a speedy trial. What I am trying to get at is what effort you have made to have this case reinstated on the docket and tried.

Mr. SLADE. When this case was put on the calendar we forced it as quick as we could, four weeks, and then we had a promise to put it on in August, and they have had the United States Government against conspirators for other cases. Now, they are taking up other cases. They tell us there are other jail cases out there, and that may be right. There may be some men in jail entitled to trial. We have had no trial. The United States court up there is different from any other courts.

Mr. DANFORTH. Is not the same in all United States courts?

Mr. SLADE. The procedure in New York stands by itself; there is no comparison. You simply can not get at it. No living man knows what the procedure is to be.

As an illustration, a case is marked on the calendar. The defendant comes in with his witnesses in a criminal case. The district attorney sends out his secret service men and discovers who the witnesses are, and each of them receive a subpoena to appear before the grand jury on the eve of the trial, and each witness is examined as to what he will testify in favor of the defendant; and to our great surprise, when the trial comes on we will find the Government witnesses changing the testimony to meet the conditions.

Mr. IGOE. How long has that been practiced?

Mr. SLADE. In my experience, where I was counsel, where we were subpoenaed before the grand jury.

Mr. IGOE. Is this an innovation of Mr. Marshall's, or has it always existed?

Mr. SLADE. I never knew any other case of it except since he has been there. We have called at the district attorney's office and protested against it. Mr. Moss, who participated with us in one case as associate counsel, made the claim in open court and wrote Mr. Marshall an open letter telling him of the abuse of this process of subpoenaing the defendant's witnesses and his counsel. You take the case of *United States v. Simon Kugel*. I have written letters where we have written to Mr. Marshall, where witnesses have taken the stand in a case in open court and accused Mr. Hershenstein of taking written documents which they brought from Massachusetts, by which written documents it would tend to show that Mr. Kugel, the man who is charged with being a conspirator, was absolutely innocent. Or, in other words, they would have a tendency to show the

inconsistent theory of the Government, and that Hershenstein took these documents, tore them up, and threw them in the waste baskets, and told a Mrs. Cohen, of respectable people of Boston, to go home. We discovered these people, brought them to New York, wrote Mr. Marshall a letter, and he has laughed. What do they care about the destruction of evidence?

In that same Kugel case they went down there, went into the building where he has his office, and the general superintendent is willing to make an affidavit where they attempted to bribe him and induce him to break into the office of this man to steal his papers. They finally did. Mr. Hershenstein was one of the attorneys who went down there. I am not giving you statements which I can not support. These are disinterested people, whom I will bring down here.

Mr. TAGGART. What is the Kugel case that you are speaking about?

Mr. SLADE. The Kugel case was one where Kugel was attorney for Rogel & Bros., a partnership, or he was attorney for a partner, which went into bankruptcy. They then employed Kugel as counsel, and in several cases appeared before the referee in bankruptcy. During his hearing before the referee he discovered both of these clients were not telling the truth. Investigation showed they were lying. He immediately took steps to protect himself; went to the office of Rosenbaum & Levys, a respectable firm in New York; told them the condition and told them that he no longer wanted to be his lawyer, but that it was his duty to present this, and let them get another attorney if they wanted to.

This reached the ears of the district attorney. They immediately got Rogel & Bros. to deliver the lawyer. They were indicted for conspiracy, and Rogel & Bros. were also indicted for perjury. Rogel & Bros. pleaded guilty to perjury and conspiracy upon condition that they would be all right if they delivered the lawyer, and they attempted to deliver Kugel. Mr. Kugel's brother-in-law was also at the same time indicted as a coconspirator. We tried the case, and let me tell you that it is the first case in the history of Mr. Marshall's office, or second, where we succeeded in getting an acquittal; and I will tell you why: Mr. Kugel's brother-in-law was acquitted. As to Mr. Kugel the jury stood 11 to 1, and if that jury would have stood from now to doomsday they would have stood the same. On the second trial the jury were 11 to 1 for acquittal. In this Kugel case there was an expressman, a good man, who was called before the grand jury, as I am informed, nearly 60 times—a poor expressman. He was tortured to the point of committing perjury himself, and he declined to do it, until one of the grand jury came to his assistance and told him that this was not Russia and they could not torture a man that way.

Counsel was subpoenaed in this case; records were destroyed; perjury was committed; and after all is said and done, Mr. Wood appears before Mr. Justice Learned Hand and asked the court to be good enough to sustain the case as to perjurers and conspirators, and Mr. Justice Learned Hand refused to do that, and said, "Give them 30 days." And now we are informed that Mr. Wood, the district attorney, got these people pardoned, so they are respectable and occupy offices and walk in and out the district attorney's office.

In the Oppenheimer case we have already, it seems, six indictments. This is persecution. They just obtained the seventh. They had six indictments, and now they have obtained a seventh against the same man.

Mr. NELSON. What is the object of all this? What do they expect to gain?

Mr. SLADE. The object they expect to gain is to drive out the lawyers from the United States court, except those which are in close touch.

Mr. NELSON. Close touch with this firm and the Attorney General's office?

Mr. HILL. It touches on another charge in this indictment, that is, there is conspiracy and collusion between the associates of the district attorney's office, and some of his partners, not men associated with Mr. Marshall to corral and hold together in that office all the indictments, and this leads around toward them, and they keep driving after a man until these people who are in collusion with the district attorney's office and who are partners and associates get a hold of them, and then they fix the thing up.

Mr. STEELE. Six indictments for the same charge—what charge?

Mr. SLADE. Conspiracy.

Mr. STEELE. Conspiracy in what?

Mr. SLADE. To keep property away from the referee in bankruptcy.

In answer to a question or the suggestion just brought to my attention by Mr Hill, about corralling of this business: In this Kugel case, Mr. Marshall, of the firm of Battle, O'Gorman & Marshall, Mr. Warren Leslie, the son-in-law of Mr. O'Gorman, was invited to be retained in that case. That is the information that came to us. He retained Warren Leslie and gave him \$250. He did nothing. Battle came along; he gave him \$500; and then finally had to retain Morris. He was innocent, and yet they got \$750.

If you will take the record, you will find that Battle has appeared in the United States court more in one year than their firm has appeared in the previous 10 years.

Mr. STEELE. In criminal cases?

Mr. SLADE. Yes.

Mr. IGOE. I understood you were the only man who secured an acquittal.

Mr. SLADE. I am going to answer your question.

Mr. HILL. Wait a minute. If it is satisfactory to this committee, I will say that I postponed a very important engagement to me to be here to-day, and it will take me all day to-morrow. I have to go 30 or 40 miles out of town, and if you could let this come up again on Wednesday it would suit me much better.

Mr. DANFORTH. I am trying to find out what charge there is against Marshall in his case.

Mr. SLADE. Here it is from eight to nine unlawful instances of abusing processes, and conspiring to aid subornation of perjury.

Mr. BUCHANAN. That is in the charges?

Mr. DANFORTH. You are supposed to be addressing yourself to No. 2538?

Mr. SLADE. I did not see the resolution.

Mr. DANFORTH. What do you charge Mr. Marshall with having done in the case of *United States v. Slade*?

Mr. SLADE. First, with conspiring, in an effort to save Jim W. Osborne, a friend of his; second, of conspiring to indict and convict, with the knowledge of Marshall that it is perjury, and the conspiring to accomplish this result.

Mr. MOSS. Have you told the committee about the friendship that existed and still exists between Mr. Osborne and Marshall? What do you know about that?

Mr. SLADE. I have this knowledge, and of course I can substantiate that, and in a general way it is this, that Mr. Osborne was formerly a district attorney for a great many years.

Mr. NELSON. United States district attorney?

Mr. SLADE. No; first—that during that period his association with that of Marshall's office was very close and intimate, both in the style of the cases and socially; that he has known Mr. Marshall for something like 25 years; they are both members of the Athletic Club of New York and several other clubs and meet socially, as well as in a business way; that the office of Jim Osborne and the office of Battle, O'Gorman & Marshall both did business, and by the relation of the different assistants have been close; that Mr. Osborne is now and has been for months during the entire period that this Osborne case was in process a specially appointed United States district attorney, with access to all the grand jury rooms, with access to all dockets, and with the usual powers of a district attorney specially appointed.

Mr. NELSON. And subordinate to Marshall?

Mr. SLADE. No; appointed especially, as I understand it, by the Attorney General in Washington.

Mr. MOSS. Who recommended that?

Mr. SLADE. I could not tell you. As near as we can find out, it was Mr. Marshall's office. And Mr. Jim W. Osborne, a nephew, is a United States district attorney and has been and is there now.

Mr. NELSON. And was there doing the pendency of this investigation?

Mr. SLADE. And this investigation disclosed how actively he was in getting affidavits for Osborne and running to Boston.

Mr. BUCHANAN. Osborne has been special district attorney in the railroad cases over there, has he not?

Mr. SLADE. Yes.

Mr. NELSON. Was not Marshall disqualified for acting in that case?

Mr. SLADE. Not at all. Mr. Betts, from Texas, as I understand, and several other gentlemen had charge of that personal proceedings during the period of two or three years. Mr. Osborne was the man represented in some way in New York, but during the New Haven trial Mr. Kennell, of Stamford, made this statement, and it appears on record, that Mr. Marshall's brother, H. Snowden Marshall, was not indicted with the rest of the lawyers and the directors in the New Haven case and was not called there as a witness, because Mr. H. Snowden Marshall's brother was one who advised in some of the deals, and it is for that reason that Marshall failed to call him as a witness. That appears as a matter of record. That shows you the connection in that case.

Here is a case which came to our attention, which I think will be very interesting, because Battle, O'Gorman & Marshall's office is mentioned—in re Pan American Railway.

Mr. NELSON. What is the firm?

Mr. SLADE. O'Gorman, Battle & Vendeable; that is the name now.

Mr. STEELE. Senator O'Gorman?

Mr. IGOE. Does Marshall have any connection with any firm now, openly?

Mr. SLADE. No.

I may say we received that from Bright, who signs his name to it, and this is a case which is now pending, and is an exhibit in a certain case. I will read you a part of the statement, which involves a great deal of money, and shows the close connection.

Senator NELSON. What is the point?

Mr. SLADE. That Marshall refuses to prosecute any people who are represented by the firm of Battle, O'Gorman & Marshall, or large interests which are in any way affected. He says this—

Mr. CARLIN. Who is the man referred to?

Mr. SLADE. This is a letter signed by Bright, in re matter of Panama Railroad against Security Co., where he claims he has been robbed out of millions of property by forged instruments, and he gives some of the exhibits, which are a matter of record, certified by the United States officials in different countries, showing that those papers were forged, and the effort on his part in attempting to prosecute, and how Marshall refuses to do it; and he says [reading]:

This man says in the letter to me—I have not had a chance to investigate all—that he has written documents to substantiate every item that he claims; what he has gone through in an effort to make and prove a case, but he can not do it, because the office of Battle, O'Gorman & Marshall is interested; and that is sufficient protection for anybody in the State of New York.

There is also another case which can be presented and investigated.

Mr. CARLIN. Just a moment. Are O'Gorman & Battle in the New Haven case?

Mr. SLADE. In the way I have pointed out to you, that Mr. Marshall's brother was an active lawyer in some of the transactions with which the New Haven lawyers, as well as the directors, are being charged, and he was not called as a witness and was not indicted.

Mr. CARLIN. My question was whether the firm of Battle, O'Gorman & Marshall are attorneys of record in that New Haven case?

Mr. SLADE. No, they are not.

Mr. NELSON. Is this Marshall the attorney prosecuting these gentlemen in the New Haven case, or is it a special prosecution?

Mr. SLADE. I think Mr. Betts, of Texas, and some other gentlemen are doing that, but Mr. Osborne is supposed to be one of the special counsel.

Mr. NELSON. This Osborne?

Mr. SLADE. This same Jim W. Osborne; he is the one that in his office has access to the grand jury, has United States powers with the marshals and everybody else, and during all this time that this Oliver Osborne business took place.

I have only given you, gentlemen, a speck of what this record will disclose and what can be proven. I have here a number of other mat-

ters, which may lead, if I had the power to investigate and produce witnesses, to show where moneys have been paid, but I can not get that information by any witness coming here voluntarily.

Mr. IGOE. Moneys paid to whom?

Mr. SLADE. Moneys paid some district attorney's office.

Mr. GARD. What district attorney are you speaking about?

Mr. SLADE. Some assistant district attorney, in the United States district attorney's office, marshal's office, has been paid money to accomplish certain results, not in this case, but in other cases; but it can not be proven unless I had the power to subpoena. There is not a lawyer at the bar, and if you gentlemen make investigation you will find that they will be only too happy to come down here and tell you the conditions which exist up there; but they do not care to do it until they know they are obliged to come here and have the protection of this House for telling the truth.

Mr. CARLIN. Will you give us the names of these parties?

Mr. HILL. Just one minute. I will answer part of that question. There was a gentlemen the other day, who was in one of the big firms in New York, who detailed to me in part a great deal of just what Mr. Slade has told you; a firm about which every lawyer here knows something. He told me in private conversation the same character of testimony can be produced that this man has, and I asked him if he would come down and tell that to the committee. Well, he hesitated: "We don't want to volunteer to do that; but if I am sent for I will be glad to do it," and I would say that he is out of the law office of Bourke Cockran.

Mr. CARLIN. Mr. Slade, it has been suggested that it might be wise and would you mind giving the committee an abstract in letter form or brief, of the specific charges that you say could be proven, if we had the power of subpoena, and the names of the parties who ought to be subpoenaed?

Mr. SLADE. I have here made out the specific charges, and the testimony in substance, only; explaining each charge is an illustration. Here is the first charge—

Mr. CARLIN. Have you the names of the witnesses you would summon?

Mr. SLADE. In some way I have.

Mr. CARLIN. Are they on that paper?

Mr. SLADE. Some of the names I referred to, the people who will testify, and what they will testify, and a great deal of it is written documents, sworn to under oath.

Mr. CARLIN. You say some of the names are on that paper?

Mr. SLADE. Yes; Le Gendre; I have his name. I have the other matters I have referred to. Some of the exhibits I have attached here.

Mr. CARLIN. Are there any names not on that paper which you can put on it?

Mr. HILL. I think the names of outside firms, other firms of lawyers who would be willing to testify.

Mr. CARLIN. I think we can reach them under subpoena.

Mr. SLADE. Yes.

Mr. CARLIN. Because, after all, if the committee should determine to ask for the power of subpoena, we would like to know whom to subpoena.

Mr. SLADE. Only with reference to the Osborne case, or in general?

Mr. CARLIN. In general.

Mr. SLADE. In a general way I will make up the list and send it to you. I would suggest that you can subpoena any lawyer.

Mr. CARLIN. You have made a specific memorandum for the direction of the committee. I would like you to give us the names of the persons whom we might subpoena, to substantiate the memorandum which you have made.

Mr. SLADE. Well, you can subpoena——

Mr. IGOE. Can you not attach that?

Mr. SLADE. Yes.

Mr. NELSON. You are going to file that?

Mr. SLADE. Yes; unless you request me——

Mr. NELSON. We do want you to file it.

Mr. SLADE. I will be glad to.

(The document submitted is as follows:)

IN RE BRIGHT MATTER.

Mr. CHARLES BRIGHT. If called will testify in substance as follows:

That on the 20th day of August, 1913, he was treasurer of the South American Securities Co., and that upon his taking office he discovered that the former treasurer, Charles R. Demarest, handed over only a few books and papers and destroyed the more important books, such as ledger and journal; that after an investigation he discovered that the reports filed with the United States Government, collection of internal revenue, by this former treasurer, Mr. Demarest, and by Mr. Alpheus H. Favour, president, were false, and that they had been making false reports to said department and to the comptroller of the State of New York. That on September 29, 1913, he wrote a letter to the collector of internal revenue, custom-house, in which all of these different facts are set forth in detail, which is hereto annexed and known as Exhibit A.

That on October 6, 1913, he also addressed a letter to the Attorney General, Department of Justice, at Washington, concerning the United States district court for the southern district of New York, which is marked "Exhibit B" and hereto annexed and made a part hereof.

That subsequently this matter was taken up with the Department of Justice, and that Mr. John E. Walker, Esq., was apparently put in charge of the criminal charges made by Mr. Bright of perjury and subornation of perjury against J. J. McKelvey, A. H. Favour, Mr. Johnson, and others. That with reference to said criminal charges and the perjury charges Mr. Bright wrote a letter, dated October 17, 1913, a copy of which is hereto annexed, marked "Exhibit C," and made a part hereof.

He will further testify that instead of this matter being prosecuted as it ought to be for improper purposes, the matter was being delayed and the indictments not obtained.

That on December 18, 1914, another letter was addressed to John E. Walker, special assistant to the Attorney General in the office of the United States district attorney, New York, in which he informed Mr. Walker that he (Bright) discussed with Mr. Wixson the matter of the prosecution of Demarest and Favour for swearing to false

statements made to the Internal Revenue Department in January, 1912, and then gave Mr. Walker a complete and detailed statement and information concerning the different charges and how the same may be proved, etc., and particularly calling attention to Mr. Wixson to the boast made by one of these parties to the effect that O'Gorman, Battle & Marshall were all powerful and could prevent all indictments as against any of these persons, as more fully appears in the letter dated December 18, 1914, marked "Exhibit D," and hereto annexed and made a part hereof, and the inclosures showing the evidence and proof thereof, etc., thereto annexed and marked "1 and 2."

Subsequently, on May 8, 1914, Mr. Bright again wrote to the Department of Justice, which letter is on file, and received a reply from the Department of Justice signed by John E. Warner, special assistant to the Attorney General, which is dated May 8, 1914, and designated "Exhibit E."

That on August 30 he again wrote to the Department of Justice, wherein he informed the Department of Justice that he intends to complain of certain acts in violation of the criminal law of the United States and informed the Department of Justice that Mr. Marshall, the present district attorney, will be disqualified to prosecute these acts because his law partner, Mr. Battle, is attorney for some of the persons against whom the complaint will be directed. That he received a reply from the Department of Justice dated September 5, 1913, a copy of which is hereto annexed, marked "Exhibit F," and made a part hereof.

That on January 8, 1915, Mr. Bright caused a letter to be forwarded to the Attorney General in Washington, to the attention of Mr. Wallace, signed by William Harper, of the South American Securities Co., in which he seriously complained that Mr. Walker is not prosecuting the criminal cases with due diligence or in the manner that justice demands, and, in fact, it is now being unnecessarily delayed, as it also has been in the past, and that such delay is to the manifest advantage of the accused and other interested parties and in a way that tends to defeat justice and to prejudice the interests of the Government and the complainant company, and in full detail sets forth in said letter the means used by Mr. Walker in the southern district of New York to avoid the prosecution or the indictments of the different parties mentioned, which letter is hereto annexed, made a part hereof, and marked "Exhibit G."

That on January 12, 1915, the Department of Justice acknowledged the receipt of said letter, as appears by Exhibit H, hereto annexed and made a part hereof.

Then follows other correspondence, which are annexed hereto—a letter dated January 13, 1915, addressed to John E. Walker to the post-office building, New York City, marked "Exhibit I"; a reply to said letter dated January 14, 1914, from the Department of Justice, marked "Exhibit J"; a letter addressed to Walker, dated January 14, 1915, marked "Exhibit K"; and another letter addressed January 14, 1915, to Mr. Walker, and marked "Exhibit L."

This witness will further produce all the other correspondence with reference to the different charges preferred by him on behalf of his company as against the different parties mentioned in the statement, all of which are on file in Washington in the different

departments, and will testify orally, from all of which he will show that the only reason the Department of Justice, or particularly the United States district attorney's office for the southern district of New York, with Mr. Marshall in charge, refused and neglected to procure indictments for perjury and other crimes charged against these different people is because these people were represented by O'Gorman & Battle, former associates and partners of Mr. Marshall. That is the case of Vidal against numerous defendants, amongst which are McKelvey and Favour, which was pending in the United States district court for the southern district of New York, Messrs. O'Gorman & Battle appeared for McKelvey and Favour in that suit, they being two of the men against whom Mr. Bright had preferred criminal charges to the United States district attorney.

The witness will further show that upon the same evidence at least one of these men was indicted in the State courts, referring to the false reports filed with the comptroller of the State of New York as to the amount of business done by the same companies, as pointed out in the letter of December 18 (Exhibit D), where he says:

That the district attorney of New York County had all the evidence used before the grand jury to prove business carried on and also as to profits of about \$1,000,000 for the year 1912. That last week in referring to the matter I was under the impression that the three years had expired, but I found later that this was not so. It is over three years since the State affidavit was sworn, October, 1912, but the United States affidavit was sworn January, 1912, so that the Government has still time to take action. That Mr. Demarest escapes under the State case where Favour alone is indicted. That the penal laws of the United States can still be enforced as regards Demarest; that is, if no further time is lost in obtaining the indictment.

The witness will also further be able to prove by written documents, which are impossible at this time to set forth in full, which are on file in the different courts in the State of New York, as well as correspondence and other valuable documents in his possession, the system and means used in the United States district attorney's office to prevent the indictments of these different individuals, as somewhat briefly stated by this witness in a paper printed, dated February 2, 1915, on page 4, which is designated Exhibit M and hereto annexed and made a part hereof.

He will also be able to show by written documents, proofs, oral proof, as well as circumstantial evidence and affidavits on file, how judges in the United States district court for the southern district of New York are influenced in matters involving large interests and who are represented by O'Gorman & Battle, which this witness briefly refers to in said Exhibit M on page 4.

That the witness will further testify and show that no indictments were in fact ever procured against any of said persons, not from lack of sufficient evidence, but because of the personal influence of O'Gorman & Battle upon H. Snowden Marshall, United States district attorney, and his influence upon the special United States district attorney and those connected with him.

That it is impractical to attempt to state in detail the different witnesses, the documents, the substance of the documents or the facts connected with this particular matter, but the witness will be glad to submit in detail the facts to substantiate each and every one of the charges made when examined.

Mr. NELSON. Are there some names whom you would not want to give now?

Mr. SLADE. Sure. I have one in mind—I would like to answer the chairman's question, but I do not dare to, because this witness has asked me under no circumstances to disclose his name or his firm, unless he is sure that he will be called by a subpoena, because if he does he might as well quit practicing in New York.

Mr. CARLIN. We ought not to press it in a case of that kind.

Mr. SLADE. I want you to bear in mind they are all willing to come and testify, but their letters will show that they are pleading, "For God's sake do not put me on, because the same thing will happen to us as happened to the rest." They have got to be shown they will receive the protection. If you will do that, I will produce the name of every one in the Federal Building, down to 60 Wall Street.

Mr. CARLIN. It will oblige the committee very much if you will leave the memorandum about which you are speaking with the committee, the names of the witnesses referring to the prosecutions as you have arranged them in your memorandum. May I give them to Congressman Buchanan and he will deliver them to you?

Mr. SLADE. Yes, indeed.

Mr. MOSS. The attorney for the Independent Tobacco Co. charges that Mr. Marshall failed to prosecute the Tobacco Trust or to permit evidence to go before the grand jury. Do you know who the name of that attorney is?

Mr. SLADE. I know the names of the tobacco people. I can get the exact names from Strook & Strook.

Mr. MOSS. Will you furnish that?

Mr. SLADE. I will furnish that; I will make a note of the name.

Mr. MORGAN. Were these charges taken up with the department and the Attorney General to have the United States attorney removed?

Mr. SLADE. I will answer that. In one of the arguments before the United States district court we at that time threatened, "We are not going to stop in this court, if we have to go to Washington." The minute we informed of that, our friends preceded us to Washington, and were in the United States Attorney General's office, and when we attempted to connect the doors were closed. The reception was cold.

Mr. CARLIN. Did you attempt to confer with the Attorney General's office?

Mr. SLADE. We attempted to do that, and it was a cold reception we received.

Mr. NELSON. Did you attempt to do so by means of letters or personally?

Mr. SLADE. Personally. Benjamin Slade went down there, and we were informed that the United States district attorney's office would precede us, and tell them the whole story.

Mr. MORGAN. Did you ever file any letters before the Department of Justice?

Mr. SLADE. No; because we knew perfectly well nothing would happen.

Mr. MORGAN. How did you know? Do you know you are perfectly justified in saying "nothing would happen?"

Mr. SLADE. I think the investigation we have made through people who are in Washington and from whom we attempted to get some

advice as to the best way to proceed in this case, and the solid connections, and the influence of some people, we were informed about, we were advised at that time, and I think the advice——

Mr. MORGAN. Who were you advised by?

Mr. SLADE. You gentlemen are asking me a question that I am perfectly willing to disclose and willing to submit the name, but you can see how delicate that is for me, in a sense, where the man has given it to me in perfect good faith.

Mr. NELSON. Were you advised not to do it?

Mr. SLADE. We were advised to go down and talk, and found out what they wanted, but to be very careful not to give them too much information, because that information would reach Mr. Marshall; and we took the precaution. We were told to submit the name of everybody before our trial, and we did not think, under advice of counsel, that that was a proper thing to do, to give them the facts, together with our witnesses, before the trial came up.

Mr. NELSON. Do you believe that the department here is aware of the conditions there, or simply takes a story which looks fair upon its face for the truth?

Mr. SLADE. Of course, I no not know. I am unable to make any accusations against any department, because I have no personal knowledge. I can simply answer that there was a lady who came into our office a great many months ago and consulted us as to whether it was not possible for us to take up a certain matter which she has been trying to prosecute for a long period. She has written to almost every Congressman and Senator, has attempted to reach the Department of Justice, has secured restraining orders from the court for the purpose of compelling the United States District Court in the Southern District of New York to punish what is known as "piracy upon literature"; that is, compositions and play rights. Hers has been violated; but there are large firms, theatrical firms, whom, I understand from her, are represented by Battle, O'Gorman & Marshall, or one of the subordinates in the office, and for that reason she has been unable to obtain the prosecution. She told me she went down to the Department of Justice; that she has letters, documents, orders of court here, in which they closed their ears to her. They told me they could not do anything.

Mr. GARD. Is it Marie Doran you are speaking about?

Mr. SLADE. I do not recall at this time, but I have a record of it in the office, and I will be glad to send it to you.

I have also heard of another instance from a man in Denver, with whom I have had correspondence, who, in a letter and published in newspapers with headlines and black type, charges Marshall with being a crook, a conspirator, and a thief; and he says, "I defy you to come in any State in the United States and defy me to prove that fact." He has made an effort for years.

Mr. GARD. Can you furnish his name.

Mr. SLADE. Yes; I have the written documents.

Mr. CARLIN. Is that the same fellow who charged the House Judiciary Committee with certain things, and was finally tried?

Mr. SLADE. No; I do not think so.

Mr. NELSON. He was not from Denver.

Mr. BUCHANAN. His name is Berline; I think that is the way he pronounces it.

Mr. SLADE. I think that is it.

Mr. BUCHANAN. I won't say that that is the name; I expect to have that.

Mr. SLADE. I think that is his name. I have the correspondence and the pamphlet that he wrote and published, and the letters which passed between him and Washington, between him and the attorneys, and between him and the President of the United States. He says, "I have the truth and will be glad to supply it to any living human being who will investigate it."

Mr. BUCHANAN. I want to say that I intended to put that matter before the committee when I was before it, until it seemed to be the sense of the committee that they wanted it in affidavit form. Since I was impressed that the committee want it, I think I will have that in affidavit form by Wednesday of this week.

Mr. CARLIN. What is the name of the man?

Mr. BUCHANAN. Berline.

Mr. CARLIN. Does any other member want to ask any questions?

Mr. SLADE. Would you gentlemen like to hear Mr. David Slade? I think I have in a general way covered it.

Mr. STEELE. I want to ask one question.

Mr. BUCHANAN. I would like to ask a question. You spoke of the letter on which Miss Tanzer was indicted, but did not produce the letter. Have you that letter?

Mr. SLADE. Here it is; I will read the letter.

Mr. CARLIN. You are going to leave that record with us?

Mr. SLADE. Page 575. I intended to read it [reading].

EXHIBIT No. 9. JANUARY 17, 1916.

[Deft.'s Ex. A. Apl. 27-15. C. M. H. (Envelope:) Mailed Fox St. Station, N. Y., N. Y., Dec. 27, 1 p. m., 1914.]

Private.

SUNDAY, December 27, 1914.

Mr. JAMES W. OSBORNE, Esq.,

115 Broadway, City.

DEAR OLIVER: Trying to change your mind? It's too late; you have ruined my life and I'll hold you to your promises.

I have kept this trouble to myself but can't stand it any longer, therefore I'll have to seek help through other resources. I have waited this while thinking you would be reasonable and consider what this means to me.

I want no publicity, for there's still a little pride left in me, although you have taken most out of me. My meeting you Christmas Eve was by chance. Taken by surprise, weren't you? Was as near to you on several other occasions before then but didn't want to be bold. Will tell you when and how some time.

Did I get the letter you never sent me? Well, I still have the ones you sent me when you were the California ranchman, which I kept, not for a purpose, but because I thought you were just the grandest man and I loved you with a heart that wasn't meant for a man like you to trifle with. You know it wasn't for the diamonds (that you are still having fixed for me) or your money. I was always in the habit of dressing nicely, but things weren't as nice with us lately. I was content. Did you ever hear me complain? In fact, I tried to hide everything until everything was in better shape.

You know I was a good girl until I met you, but was so infatuated with you from the start that I lost my head entirely and didn't stop to reason, but always knew you would protect me, for I didn't think a man of your reputation would act otherwise, but I hope my doubt is all a misunderstanding on my part for your sake.

Don't let me confide in anyone or do anything you wouldn't like me to do, for I haven't as yet, but will have to if you won't protect me. I knew you weren't going to me Christmas Eve, but I went down anyhow. That all added to my misery. Will wait to hear from you until Saturday next and then I shall not write you again.

RAB.

There I stood waiting at the Circle.

This is the letter upon which she is charged with having gotten money, and upon which she was arrested.

Mr. STEELE. Was there ever any action by the New York Bar Association with reference to those letters?

Mr. SLADE. None. The nearest we got to that was that after Safford was brought in an assault took place. Mr. Wood was surrounded by his armed guard of the 12 or 15 men up and down the hall; and he assaulted Mr. Benjamin Slade in open court by punching him in the face and calling him names which I would not dare to repeat to you. We obtained as many witnesses as we could—they are No. 3 that I referred to in the Safford case—and this is published in a newspaper—made the statement right there and then to the foreman of the grand jury, by calling him one of the vilest names that one man can call another. [Reading:]

And you said—

An investigation was supposed to have been started, and I understand that the investigation was turned over to Mr. Marshall, and Mr. Justice Hough wrote a memorandum in which he attributes the assault to, oh, some slight provocation, but he does find that the United States attorney has no right to strike or direct the United States marshal to throw people out, as they did us in that case and as they did our witnesses, or to threaten us with guns; that they were not the United States marshals or the officials upon whom that duty involved. Then we were informed if we would like to present it to the bar association they would consider it. We told them we would consider that a personal matter for us to make the charge; that if they wanted to take it up they ought to take it up on their own initiative.

Mr. STEELE. They never took any action?

Mr. SLADE. No. That is as far as we got into the bar association.

Mr. CARLIN. We want to hear your brother.

Mr. GARD. This Safford case is now in the court of appeals?

Mr. SLADE. The circuit court of appeals.

Mr. GARD. When is it to be heard?

Mr. SLADE. It was on the calendar ready to be argued, when on that morning we were charged with attempting to falsify a record, and for that reason they wanted it sent back, and it was sent back. So, I do not know when they are going to put it on.

Mr. IGOE. How many copies of that record have you? Is that the only copy?

Mr. SLADE. I have here but one, but I will try to have them get for you gentlemen one more copy.

Mr. GARD. Where is this Tanzer woman now?

Mr. SLADE. In New York, employed, working. I think she is getting \$15 a week, and when she worked for Harrington & Evans she was earning \$35 a week. She was a forelady of an entire factory with 80 or 90 girls under her.

I may have called this fact to your attention: Mr. Farrington of Farrington & Evans are subpoenaed by Mr. Marshall to come down and tell him what he knows. He was her employer. It was to him that she first told the story. It was to him that she gave the letter which he is supposed to have received from Osborne, and it was from him that we received them. He was called before Mr. Marshall, and he was

asked, "Are you willing to go to the grand jury?" He told them what he knew of the case, that he believed in her truthfulness, her honesty and good faith, and when he made that statement they told him: "We do not want you. You go home." When they subpoenaed our investigator, Mr. Hanan, he asked us what to do. We told him to do whatever Marshall said and tell anything and secrete nothing. He brought with him the copies and originals which he had in his possession, which shows what investigations they made and how careful they were. He was before the grand jury, but his reports were not submitted; and that is the way they kept out all of the testimony of any consequence favorable to Mr. Slade or anybody else connected before the grand jury.

The only man who escaped indictment in this case was Mr. Benjamin Slade, and he was very fortunate, as Osborne says, under oath, "The only reason I did not get him was because I did not get him. I would be glad to get him, too."

Mr. CARLIN. Mr. Slade, when did you start the thing about the present congressional investigation?

Mr. SLADE. I have made the statement that I would do it for a long time, but until I got things in shape I did not start it until I heard that there were some proceedings to be started or I saw it in the newspaper that Congressman Buchanan had started proceedings, and then this is really the first time I have had any opportunity to present my charges to this House.

Mr. CARLIN. Do you want us to hear your brother this evening?

Mr. SLADE. If you will be good enough.

Mr. CARLIN. You may bring him in.

Mr. CARAWAY. Does he know anything in addition to what you know?

Mr. SLADE. I think so. I will tell him I have covered most of it, unless he can think of something additional.

STATEMENT OF MR. DAVID H. SLADE.

Mr. CARLIN. Mr. Slade, how much time will you require to address the committee?

Mr. DAVID SLADE. It is up to the committee to cut me off or permit me to proceed.

Mr. CARLIN. It is up to you to tell us how much time you will require.

Mr. DAVID SLADE. I assume it will be about as long as my brother's.

Mr. CARLIN. He has been here two and a half hours; we can not stay here that long.

Mr. IGOE. We do not want you to cover the same ground.

Mr. DAVID SLADE. I do not know whether my brother covered it all.

Mr. CARLIN. How much time do you think it will take in addition to the statement he has already made?

Mr. DAVID SLADE. I assume about an hour.

Mr. HILL. Just one minute. I want to ask you one question. I touched upon and it was referred to by you that two or three judges have been brought in. They called them "imported judges." That will not take very long. Do you or either of you know anything about the charges here—four or five of them together—that involve the

bringing in of outside judges and the attempt of the district attorney over there to influence the new judge or "imported" judge toward rendering his decision?

Mr. DAVID SLADE. Yes.

Mr. HILL. And can you supply us the names of some persons?

Mr. DAVID SLADE. I will be glad to supply you, and I believe that no one of those judges will deny the fact that 90 per cent of our criminal cases are tried by the "imported judges." A small percentage, probably 10 per cent, probably are tried before local judges. We have had experience where the district attorney has personally communicated with the judge and presented the facts to the judge as he sees them before that judge would go upon the bench as a trial justice. We can submit names to the committee of the judges who have sat there, who have been "imported."

Mr. GARD. What is the reason so large a percentage of your criminal cases are tried before foreign judges?

Mr. DAVID SLADE. That I am unable to answer, although our judges, from my personal knowledge of our Federal court, have plenty of time to try cases, but for some unknown reason the greater percentage of our criminal cases are tried before "imported" judges.

Mr. CARLIN. Do you know that the bar of New York petitioned Congress, asking that we pass a statute providing for extra judges?

Mr. DAVID SLADE. That I do not know.

Mr. CARLIN. And because of the fact that the judges there could not try the cases?

Mr. DAVID SLADE. There may have been such a petition.

Mr. CARLIN. Have you seen that petition?

Mr. DAVID SLADE. I have not.

Mr. IGOE. Do your judges prefer to try civil cases, and do they not like to try criminal cases?

Mr. DAVID SLADE. I believe we have judges who have tried criminal cases, and capable judges, men who were able to try those cases, but I can not tell you why they do not try those cases.

Mr. IGOE. Do you say that some of the judges—your local judges—that the district attorney has presented these cases to them before trial?

Mr. DAVID SLADE. Our local judges?

Mr. IGOE. Yes.

Mr. DAVID SLADE. No; because the local judges do not try these cases. I do not believe there is any local judge. We can cite you cases. The Kugel case is a good sample, where, after the jury had been out deliberating, the judge went out to dinner with Roger P. Wood, and then came in, after discussing the case at the dinner table, and upon his motion asked for the jury to be brought in, because he wanted to charge the jury further upon the government's theory of the case; and it was over my objection that the jury was not called in.

Mr. CARLIN. How do you know they talked it over at the dinner table?

Mr. DAVID SLADE. Because the judge came in, and he made that statement, that Mr. Wood called his attention to certain facts.

Mr. MOSS. The assistant district attorney of the State was associate counsel, and will corroborate that statement, that it was over my objection that the judge did not send for the jury, and I said

that if the jury wanted any other instructions to inform the court to that effect.

Mr. GARD. Do you think it improper for a judge to furnish all the information that may be vitally necessary?

Mr. DAVID SLADE. I do; if it is of great importance to me, I think it is improper. Answering that question directly, it is very improper, because it is the duty of the district attorney, if he wants to consult a judge, that he shall do it in open court, so that I may be heard as associate counsel or counsel in the case that is pending.

Mr. MAXWELL SLADE. I think I may add to that that there was a judge who came over from Indiana—I do not recall what the judge's name was—and it was very significant, the position that he took when he got upon the bench. It seems that one of the district attorneys attempted to talk to him in a certain matter that was going to be brought out—

Mr. GARD (interposing). Was it Judge Anderson?

Mr. MAXWELL SLADE. I think it was Judge Anderson, if I recall. At any rate, they told me he was from Indiana. He said, "Anything you have to say," or words to that effect, "concerning this case must be spoken in open court, in the presence of your adversary; no star chamber proceedings."

Mr. DANFORTH. I would like to ask you if the local judges are not as open to this practice by the United States attorney's office as the imported judges?

Mr. MAXWELL SLADE. They are not. Now, I do not charge the judges, mind you, with any improper conduct. When a judge comes there, he is not familiar with the circumstances, conditions, and procedure.

Mr. DANFORTH. He might not be familiar with the practice, but he would be with the law?

Mr. MAXWELL SLADE. That is right. I could not answer why the district attorney does it, but they never try it with our local judges.

Mr. DANFORTH. Would it not be proper, if they be imported judges, as you term them, to advise them as to the practice of your State?

Mr. MAXWELL SLADE. I agree with you, but just upon the practice and that is all; not upon the facts of the case.

Mr. NELSON. Is this an innovation under Mr. Marshall, or has this practice continued for some years?

Mr. DAVID SLADE. I never heard of it before, and I have been a member of the bar since 1904.

Mr. CARLIN. You never had imported judges until recently. The statute was only passed at the last session of Congress?

Mr. DAVID SLADE. Yes; we have had judges sitting there from foreign jurisdictions. We have had Judge Platt from the district of Connecticut.

Mr. CARLIN. But this act was only passed at the last session, was it not?

Mr. DAVID SLADE. No. You will find that in New York judges were sent in, by request of the district attorney, prior to the passage of that statute that you just referred to. We have had judges come from other districts for a period of five or six years.

Mr. CARLIN. They had to come when a judge was disqualified or when a judge was sick, but under the statute which we passed a judge could come there because of a congested docket.

Mr. DAVID SLADE. We have had judges come there, because the docket was congested, for a long time—four, five, or six years. I believe that Judge Hunt, of Vermont, sat there a good deal long before that statute was passed.

Mr. NELSON. I think you answered my question by saying that this was an innovation, and that you had not heard of it before.

Mr. DAVID SLADE. Occasionally; I had occasionally, but most of our judges are trying criminal cases, and Judge Hunt and Judge Platt have been sitting there. These rumors never existed preceding this administration, never under Mr. Wise or under Mr. Stimson. They were all recognized as and we used to call them, bulldogs in those offices, but they were honest, strong, and severe. But we loved them for it; we did not care. There was not any such thing as a man being conspired against or railroaded off under those men, but it is only under the present administration that we have had any trouble.

Mr. STEELE. Why did you call them bulldogs?

Mr. DAVID SLADE. Because they were pugnacious. They would leave nothing undone if they thought they were right, and I am willing to give them all credit. If they believed they were right, they would go to the limit.

Mr. STEELE. Is Mr. Marshall known as a bulldog, too?

Mr. DAVID SLADE. I can not call him in that same manner.

Mr. STEELE. You said a while ago that you secured the only acquittal that was known under his administration?

Mr. DAVID SLADE. I did not mean—I beg the gentleman's pardon; I did not mean the entire Democratic administration. I am referring myself to Marshall.

Mr. STEELE. I refer to Marshall's administration. I did not say Democratic administration.

Mr. DAVID SLADE. Then I did not get your question.

Mr. STEELE. I said under the administration of his office, while he was district attorney. Is that a fact? I understood you to say a while ago that you were the only one who had gotten an acquittal while Mr. Marshall was district attorney?

Mr. MAXWELL SLADE. So far as my knowledge goes, in the Feldman case. But I am telling you the result was that Mr. Kugle was retried upon the same charge, with 98 per cent less evidence, and they stood 11 to 1 for acquittal, but that one you can never get, and one of the jurors told us afterward that he said, "John, if you are honest in your convictions get down on your knees and pray to God to let you vote right, and if you do not, I know you are a crook."

Mr. DAVID SLADE. As a lawyer, I am cognizant of the fact that the charges are serious. I have been always taught to believe that every public official should perform his duties, and I want to impress upon this committee the fact that it is a mighty unpleasant duty for my brother and I to come here and present these charges, but we feel, irrespective of our personal interests in this case, that we are performing that duty which every young citizen or every young American or young lawyer owes when he takes the oath of office as a lawyer. I want to present the facts to this committee. I feel, after the committee has gone through these facts, that it will find we can substantiate every statement we make by testimony, by records, and by witnesses. That is a bold statement to make, but we would not make it unless we can back it up.

Mr WILLIAMS. Your statements as to the practices you complain of can be corroborated by many reputable attorneys of New York City, can they not?

Mr. DAVID SLADE. I believe so. In answer to that question, all lawyers here will necessarily ask themselves one question—but before I say that, I want to say that James W. Osborne was a special United States district attorney at that time, and that is the only way he got into that court; that is the only way.

Mr. WILLIAMS. What we want you to do is to furnish us with the names of reputable firms of attorneys of New York City who are familiar with these practices and who can detail a set of facts or conditions in corroboration of what you have given us here to-day.

Mr. DAVID SLADE. I will do so. You must remember this: I do not believe you will find one lawyer who will come here unless he is subpoenaed.

Mr. WILLIAMS. But if these practices are so common it is known generally to the New York bar, and there are a lot of reputable attorneys there, and for my part I want the names of some of them who can corroborate the charges made by you and show that these practices do prevail.

Mr. DAVID SLADE. I shall be very glad to submit to you some names.

Mr. MORGAN. What reason do you give for not having presented these charges to the Attorney General of the United States?

Mr. DAVID SLADE. My associate, Mr. Benjamin Slade, presented these charges to the Attorney General orally, and when he went down there he was, I believe, sent to Mr. Wallace, or somebody else. Now, he was already preceded by somebody from Mr. Marshall's office. There was no reason—

Mr. MORGAN (interposing). Do you not think it is proper, when you have charges to make against a public officer, to present them in writing, and have them supported by affidavits, so that that public officer could act in some way?

Mr. DAVID SLADE. But we could not help thinking the Attorney General had already been talked to by somebody from Mr. Marshall's office, because they had the facts. Now, all I have got to say is that where a United States district attorney's acts are bona fide he will not have to rush down here and present his side.

Mr. CARLIN. Have you already submitted your case to the Attorney General?

Mr. DAVID SLADE. When my brother came here to see the Attorney General, immediately when he announced his name they said, "Oh, you are in that Osborne-Tanzer case." Mr. Osborne or somebody from the United States district attorney's office had already been there.

Mr. CARLIN. What I am trying to get at is whether your brother stated the charges against Mr. Marshall to the Attorney General.

Mr. DAVID SLADE. No; when he found that condition he refused to submit them; but he went there for that purpose.

Mr. IGOE. Did he see the Attorney General himself?

Mr. DAVID SLADE. No; I think it was Mr. Wallace.

Mr. WILLIAMS. Was he willing to submit his charges and facts?

Mr. BENJAMIN SLADE. We were not then tried and were under criminal indictments, and we could not do that; but we would have

given them the entire case if we had their assurance that it would not be disclosed.

Mr. CARLIN. The same condition exists now, does it not?

Mr. DAVID SLADE. We are perfectly willing. We have nothing to conceal in any shape, manner, or form. You gentlemen are all lawyers. If you will take this one record—it is United States against Slade and McCullough—you will find a transcript of nearly 10 or 11 days' trial, and in those 11 days of trial they have not offered even a scintilla of evidence of any crimes that we have committed. Now, if Mr. Marshall had any evidence before the grand jury upon which he obtained these indictments, he would have offered it in this case to show that the indictments were properly procured; but he did not. The only evidence was that I whispered in my client's ear in the court room; that I openly said, "Here comes Mr. James W. Osborne." Now, those were the only overt acts. He did not particularly answer the question how he obtained these indictments during all of these 11 days of trial.

Mr. CARLIN. You said in the court room, "Here comes James W. Osborne?"

Mr. DAVID SLADE. Yes, sir.

Mr. CARLIN. You were trying to establish the identity of Mr. James W. Osborne?

Mr. DAVID SLADE. No. This was in the open; reporters were all there when Mr. Osborne came in. I did not want to do him an injustice, so I stepped over to my client's ear—I will be very frank with this committee—and I said to Miss Tanzer: "Here comes Mr. Osborne now. Before you do him an injustice, before any testimony is taken, look him square in the face, and is he the man?" That is what I said. And she said: "Mr. Slade, yes; he is the man." That is the overt act they are charging me with, and that in that way I obstructed justice. That was the only thing brought out in the 11 days of trial.

Mr. CARLIN. Did you not fear that Miss Tanzer would not be able to identify him?

Mr. DAVID SLADE. No; I had no fear at all, but I wanted to cover every avenue; I did not want to do him any injustice, because I called Mr. Osborne up a long time before I brought this case up, and I wanted to cover every avenue in addition to the investigators, in addition to her story, and in addition to her sisters' statements. I wanted to have them meet that man face to face, and if he was the man I wanted them to say so.

Mr. WILLIAMS. Why did you whisper to her when the question of identity was one of the material questions in the case? Why did you suggest to her "Here comes Mr. Osborne"?

Mr. DAVID SLADE. Oh, everybody said that; I was not the only one; the reporters all said it.

Mr. WILLIAMS. But you whispered it to her?

Mr. DAVID SLADE. I whispered it to her because up to that time I had never seen her face that man, and up to that time I only had her statement, her sisters' statements, and the investigation that my investigators made, plus the statement from Mr. Steuer. I wanted to convince myself beyond any doubt.

Mr. WILLIAMS. You wanted to convince yourself, but did you not also want to make sure that she made no mistake?

Mr. DAVID SLADE. Yes; certainly. I did not want to do him an injustice, and I wanted to know that before any evidence was taken. If she had said "No," there never would have been any proceedings.

Mr. CARLIN. Why could you not wait until she went on the stand?

Mr. DAVID SLADE. It was not necessary, because I never intended to put her on the stand: I had plenty of other witnesses. It was a preliminary examination.

Mr. WILLIAMS. Why did you not test her by saying nothing and letting her recognize him herself?

Mr. DAVID SLADE. By that time she had already recognized him, because when he came in she began stamping her foot and she said, "Here comes the dirty dog now." That is the statement she made.

Mr. WILLIAMS. Then you whispered in her ear, "Here comes Osborne now," after she made that remark?

Mr. DAVID SLADE. Yes, sir.

Mr. IGEE. You say this was a preliminary hearing?

Mr. DAVID SLADE. Yes; before the commissioner.

Mr. IGEE. Whose examination was it?

Mr. DAVID SLADE. Rae Tanzer's examination; she was arrested.

Mr. IGEE. It was her own examination?

Mr. DAVID SLADE. Yes, sir; when she was arrested.

Mr. CARLIN. I do not exactly understand your explanation for whispering to her, if she had already told you, "Here comes the dirty dog now."

Mr. DAVID SLADE. She was accusing Mr. James W. Osborne, and his personal reputation was involved. I said, "If they can prove to me" - and I said it in open court; you will find it in this statement here "that this girl has deliberately done an injustice to Mr. Osborne, I will be the first man to help prosecute her." They were all anxiously waiting. The case had received undue notoriety, and they were anxiously waiting to see whether he was the man. And the reporters all sat there, and I was standing with my back toward the reporters. He came in, and then is when she stamped her foot and said, "Here comes the dirty dog now."

Mr. CARLIN. Having said that and having recognized him, what was the reason for you stating to her, "Here comes James W. Osborne"?

Mr. DAVID SLADE. Absolutely none. Everybody said, "Here comes Mr. Osborne." There was no reason at all why I should have made the statement, except that I wanted to convince myself beyond any reasonable doubt of—

Mr. CARLIN (interposing). Is that one of the matters for which you were indicted?

Mr. DAVID SLADE. Yes; for what I did in open court—openly; publicly - and the commissioner was there, and these men were there.

Mr. CARLIN. Was anybody else indicted for that?

Mr. DAVID SLADE. Not a soul.

Mr. CARLIN. Do you know of anybody else who made that statement?

Mr. DAVID SLADE. The reporters.

Mr. CARLIN. What reporters?

Mr. DAVID SLADE. All the reporters.

Mr. CARLIN. Give us the name of one.

Mr. DAVID SLADE. That I could not do at this minute. I will give you a dozen spectators.

Mr. CARLIN. It is not necessary to give us a dozen, but give us one.

Mr. DAVID SLADE. I will be very glad to do so.

Mr. CARLIN. Can you do it now?

Mr. DAVID SLADE. I think I can. Mr. Le Gendre.

Mr. WILLIAMS. This is the fact, is it not, that the question was whether Oliver Osborne and James W. Osborne were one and the same man?

Mr. DAVID SLADE. Yes, sir.

Mr. WILLIAMS. And that question was to be determined by her identification?

Mr. DAVID SLADE. Yes, sir.

Mr. WILLIAMS. She was your client?

Mr. DAVID SLADE. Yes, sir.

Mr. WILLIAMS. You did whisper to her, "Here comes James W. Osborne"?

Mr. DAVID SLADE. Yes, sir.

Mr. WILLIAMS. Your explanation is not at all satisfactory to me as to why you did that.

Mr. DAVID SLADE. I am telling you. Up to that time I had her statement, plus the investigations, plus Steuer's, and I wanted to cover, as I said, every avenue. If he was not the man she would have told, and I wanted the truth.

Mr. WILLIAMS. It would have been better for her to recognize him herself without your assistance, would it not?

Mr. DAVID SLADE. She did. All the reporters sitting there at that time heard this. The reporters there at that time asked me for a point of information, whether she recognized him, and for the information of the reporters I stepped down and immediately—

Mr. CARLIN (interrupting). You were not trying the case before the reporters, were you?

Mr. DAVID SLADE. No, no. But here was a personal attack upon him. Now, the committee just asked me very many things, and conceding for the sake of argument that James W. Osborne is not the man—and I think that is going far enough in a concession—I still contend that Mr. Marshall is guilty of every charge; that in these cases there was no evidence to indict my brother or me.

Mr. CARLIN. When you made that statement in open court was the attention of the court called to it at the time?

Mr. DAVID SLADE. The court was on the bench; the court looked at me.

Mr. CARLIN. And heard you make the statement?

Mr. DAVID SLADE. Yes, sir; I made it openly; there was no concealment about it.

Mr. CARLIN. Did the court say anything to you about it?

Mr. DAVID SLADE. Not a thing.

Mr. IGOE. How long after that was the indictment returned?

Mr. DAVID SLADE. About four or five weeks. I do not know how the committee feels—

Mr. VOLSTEAD (interposing). Have you a copy of that indictment?

Mr. DAVID SLADE. Yes, sir. In view of the many statements that were made I had her statement, and I saw a picture that she

brought to me. She sent a picture of James W. Osborne to me long before we were in the case, a picture of James W. Osborne to him long before we were in the case, and I knowing the fact that Mr. Osborne's reputation was involved and his professional standing was involved, I wanted to know, even at the last minute, whether she was certain of the man.

EXHIBIT No. 10, JANUARY 17, 1916.

[District Court of the United States for the Southern District of New York.]

Of the March term, A. D. 1915.

Southern District of New York, ss:

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present that heretofore, to wit, on March 19, 1915, at and within the southern district of New York and within the jurisdiction of this court, there was commenced and thereafter there was pending and there is still pending a criminal prosecution and proceeding hereinafter more particularly described, which was commenced before Hon. Clarence S. Houghton, a United States commissioner for the southern district of New York, duly appointed and qualified to act as such (hereinafter referred to as "said commissioner.")

The said proceeding arose and was as follows, to wit, on March 19, 1915, one James W. Osborne, duly executed under oath before said commissioner a complaint charging and alleging, in substance and effect, that one Rae Tanzer had unlawfully, willfully, knowingly, and fraudulently devised and intended to devise a scheme and artifice to defraud him, the said James W. Osborne, and to obtain from him money and property by means of false and fraudulent pretenses and representations, and that the said scheme and artifice was as follows, to wit: That the said Rae Tanzer would falsely and fraudulently represent and pretend that the said James W. Osborne had promised to marry her and had seduced her, and commence an action in the supreme court of the State of New York against the said James W. Osborne, and allege in the complaint in such action that the said James W. Osborne had promised to marry her and had seduced her, all of which said allegations were known by said Rae Tanzer to be false and fraudulent and were to be made by her for the purpose of obtaining from the said James W. Osborne a large sum of money and property, and that for the purpose of executing said scheme and artifice the said Rae Tanzer on or about the 16th day of February, 1915, did place and cause to be placed in the Madison Square Station, a branch post-office station of the United States, within the southern district of New York, an authorized depository for mail matter, to be sent and delivered, a certain letter addressed as follows:

"Mr. James W. Osborne, 115 Bway, City."

and that it was the intention of the said Rae Tanzer that the said letter should be sent and delivered by the post office establishment of the United States to the said James W. Osborne at 115 Broadway, in the City of New York, and within the jurisdiction of this court; against the peace of the United States and their dignity, and contrary to the form of the statute of the United States in such case made and provided; wherefore the said James W. Osborne prayed the said commissioner that the said Rae Tanzer might be arrested and imprisoned, or bailed, as the case might be. And thereupon and on March 19, 1915, said commissioner duly issued a warrant for the arrest of said Rae Tanzer for violation of section 215 of the United States Criminal Code, and thereafter the said Rae Tanzer was arrested and taken into custody by the United States marshal for the southern district of New York; and on March 20, 1915, the said Rae Tanzer was arraigned before the said commissioner upon said warrant; and the said Rae Tanzer did then and there demand and cause to be demanded a hearing and examination upon and of said charge in said complaint contained as aforesaid; and thereupon, on said March 20, 1915, said commissioner did adjourn said hearing and examination to and set the same for March 24, 1915; and thereafter, and on March 24, and 25, 1915, said hearing and examination was duly and regularly held before said commissioner pursuant to said adjournment; and at the conclusion of said hearing and examination, on March 25, 1915, said commissioner did determine and find that there was probable cause to believe the said Rae Tanzer guilty of the said violation of section 215 of the United States Criminal Code, and did thereupon order the said Rae Tanzer to be held in bail in the sum of \$5,000 for the action of the grand jury of the

United States for the southern district of New York; and the said Rae Tanzer was accordingly held for such further action as might be taken in said cause in due course.

Thereafter the grand jury commenced, and have continued up to the present time, an investigation of the said charge against the said Rae Tanzer, in order to determine whether an indictment for violation of said section 215 of the United States Criminal Code should be returned or not; and upon said hearing and examination before said commissioner on said March 24 and 25, 1915, it became and was a material matter and inquiry whether or not said James W. Osborne, of New York City, who was then and there present before said commissioner, was a person whom the said Rae Tanzer knew and had theretofore seen, known, and been acquainted with, as and under the name Oliver Osborne, and whether or not the said James W. Osborne had ever been present in person in the house in which the said Rae Tanzer resided and made her home, and whether or not the said James W. Osborne had ever been in company with the said Rae Tanzer or had ever visited the said Rae Tanzer at her home or at any other place, and whether or not the said James W. Osborne had accompanied the said Rae Tanzer on October 18, 1914, to the Kensington Hotel in the city of Plainfield and State of New Jersey.

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on March 19, 1915, and at divers times thereafter, at and within the southern district of New York, David Slade, Maxwell Slade, and Albert J. McCullough, late of the city and southern district of New York (hereinafter referred to as the defendants), well knowing all the matters of fact hereinabove alleged and set forth, did unlawfully, knowingly, willfully, corruptly, and feloniously conspire, combine, confederate, and agree together, and with divers other persons to the grand jurors unknown, to commit an offense against the United States, to wit, to violate section 135 of the United States Criminal Code, that is to say, the defendants did so conspire, corruptly, to influence and endeavor to influence witnesses in said proceeding so pending before said commissioner in the following manner, that is to say, the said defendants did unlawfully, knowingly, willfully, corruptly, and feloniously combine, conspire, confederate, and agree together corruptly to influence one Frank D. Safford, one Dora Tanzer, one Rose Tanzer, and the said Rae Tanzer, and divers other persons to the grand jurors unknown, some of whom they intended or expected might or should be called as witnesses upon said hearing before said commissioner, and some of whom were thereafter called as witnesses in said proceeding before said commissioner, to swear falsely at said hearing before said commissioner that they had theretofore known and had been acquainted with the said James W. Osborne, and had respectively seen and met the said James W. Osborne in company with the said Rae Tanzer in divers places and at divers times.

OVERT ACTS.

1. In pursuance of the said conspiracy and to effect the objects thereof, the defendant David Slade, at the Mountain Spring House, at Greenwood Lake, in the county of Orange, State of New York, and within the southern district of New York and jurisdiction of this court, did on the 22d day of March, 1915, pay and deliver a sum of money, to wit, \$10, to the said Frank D. Safford.

2. And further in pursuance of said conspiracy and to effect the objects thereof, the defendant Albert J. McCullough, at and within the United States courthouse and post-office building, in the borough of Manhattan, in the city of New York, and within the southern district of New York, during the hearing before the said commissioner on March 24, 1915, did escort and accompany Frank D. Safford to the room in which said hearing was being held before the said commissioner, and did then and there point out and indicate the said James W. Osborne to the said Frank D. Safford.

3. And further in pursuance of said conspiracy and to effect the objects thereof, the defendant David Slade on the 24th day of March, 1915, at and within the court room in which said hearing was held, before said commissioner, did point out and indicate the said James W. Osborne to the said Rae Tanzer when the said James W. Osborne came into the said court room.

4. And further in pursuance of said conspiracy and to effect the objects thereof, at and within the southern district of New York, on the evening of the 24th day of March, 1915, and after the said Safford had testified at said hearing before the said commissioner, the said David Slade did pay and deliver to the said Frank D. Safford a sum of money, to wit, \$14, against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (Sec. 37, U. S. C. C.)

(Indorsed:) U. S. District Court.—The United States of America v. David Slade, Maxwell Slade, Albert J. McCullough.—Indictment.—Conspiracy to influence witnesses. Secs. 37 and 135, U. S. C. C.—H. Snowden Marshall, U. S. attorney.—A true bill, C. Louis Boissevain, foreman.—U. S. District Court, S. D. of N. Y.—Filed Apr. 13, 1915.

Mr. CARLIN. Why did you not ask her if she knew this man?

Mr. DAVID SLADE. She looked at him and stamped her foot and said, "Here comes the dirty dog now." That is the statement she made. "Here comes that dirty dog now." I said, "Here comes Mr. Osborne; are you certain he is the man?" And she said, "Yes, Mr. Slade, yes; he is the man."

Mr. CARLIN. She said to you, "Here he comes?" and you said, "Here he comes now?"

Mr. DAVID SLADE. Yes, sir. There was absolutely nothing to conceal; I said it openly.

Mr. GOE. Was any mention made of that statement in the indictment?

Mr. DAVID SLADE. I was the first one to mention it at the hearing. I said, "Mr. Marshall, I shall present this matter to the proper authorities over which you have no jurisdiction so that proper investigation can be made." You will find my statement in there, and if it was not for that statement I do not think my brother and I would have been indicted.

EXHIBIT No. 11, JANUARY 17, 1916.

District Court of the United States of America for the southern district of New York, of the March term, in the year of our Lord, one thousand nine hundred and fifteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present that heretofore, to wit: On March 19th, one thousand nine hundred and fifteen, at and within the southern district of New York and within the jurisdiction of this court, there was commenced and thereafter there was pending, and there is still pending, a criminal prosecution and proceeding, hereinafter more particularly described, which was commenced before Hon. Clarence S. Houghton, a United States commissioner for the southern district of New York, duly appointed and qualified to act as such (hereinafter referred to as "said commissioner.")

The said proceeding arose and was as follows, to wit: On March 19, 1915, one James W. Osborne duly executed under oath before said commissioner a complaint charging and alleging, in substance and effect that one Rae Tanzer had unlawfully, wilfully, knowingly, and fraudulently devised and intended to devise a scheme and artifice to defraud him, the said James W. Osborne, and to obtain from him money and property by means of false and fraudulent pretences and representations, and that the said scheme and artifice was as follows, to wit:

That the said Rae Tanzer would falsely and fraudulently represent and pretend that the said James W. Osborne had promised to marry her and had seduced her, and commence an action in the supreme court of the State of New York against the said James W. Osborne, and allege in the complaint in such action that the said James W. Osborne had promised to marry her and had seduced her, all of which said allegations were known by said Rae Tanzer to be false and fraudulent and were to be made by her for the purpose of obtaining from the said James W. Osborne a large sum of money and property; and that for the purpose of executing said scheme and artifice the said Rae Tanzer, on or about the 16th day of February, 1915, did place and cause to be placed in the Madison Square station, a branch post office station of the United States, within the southern district of New York, an authorized depository for mail matter, to be sent and delivered, a certain letter, addressed as follows: "Mr. James W. Osborne, 115 Bway., City," and that it was the intention of the said Rae Tanzer that the said letter should be sent and delivered by the Post Office Establishment of the United States to the said James W. Osborne at 115 Broadway, in the city of New York, and within the jurisdiction of this court, against the peace of the United States and their dignity and contrary to the form of the statute

of the United States in such case made and provided; wherefore the said James W. Osborne prayed the said commissioner that the said Rae Tanzer might be arrested and imprisoned or bailed, as the case might be.

And thereupon and on March 19, 1915, said commissioner duly issued a warrant for the arrest of said Rae Tanzer for violation of section 215 of the United States Criminal Code, and thereafter the said Rae Tanzer was arrested and taken into custody by the United States marshal for the southern district of New York; and on March 20, 1915, the said Rae Tanzer was arraigned before the said commissioner upon said warrant; and the said Rae Tanzer did then and there demand and cause to be demanded a hearing and examination upon and of said charge in said complaint contained, as aforesaid; and thereupon, on said March 20, 1915, said commissioner did adjourn said hearing and examination to and set the same for March 24, 1915, and thereafter, and on March 24 and 25, 1915, said hearing and examination was duly and regularly held before said commissioner pursuant to said adjournment; and at the conclusion of said hearing and examination on March 25, 1915, said commissioner did determine and find that there was probable cause to believe the said Rae Tanzer guilty of the said violation of section 215 of the United States Criminal Code, and did thereupon order the said Rae Tanzer to be held in bail in the sum of \$5,000 for the action of the grand jury of the United States for the southern district of New York; and the said Rae Tanzer was accordingly held for such further action as might be taken in said cause in due course; and thereafter the grand jury commenced and have continued up to the present time an investigation of the said charge against the said Rae Tanzer in order to determine whether an indictment for violation of said section 215 of the United States Criminal Code should be returned or not.

And the grand jurors aforesaid, on their oath aforesaid, do further present that heretofore, to wit, on March 19, 1915, and at diverse times thereafter, at and within the southern district of New York, David Slade, Maxwell Slade, and Albert J. McCullough, late of the city and southern district of New York (hereinafter referred to as the defendants), well knowing all the matters of fact hereinabove alleged and set forth, did unlawfully, knowingly, wilfully, corruptly, and feloniously conspire, combine, confederate, and agree together and with divers other persons to the grand jurors unknown, to commit an offense against the United States, to wit, to violate section 135 of the United States Criminal Code, that is to say, they, the said defendants, did unlawfully, knowingly, wilfully, corruptly, and feloniously conspire, combine, confederate, and agree together corruptly to influence, obstruct and impede and endeavor to influence, obstruct, and impede the due administration of justice in the said proceeding before the said United States commissioner and in such other judicial proceedings as might ensue before the grand jury and in the United States District Court for the Southern District of New York after the termination of the hearing before said commissioner, and in and by, at the said hearing before the said commissioner, indicating and pointing out the said James W. Osborne to one Frank D. Safford, whom the defendants expected to be a material witness in said proceedings, and in and by arranging for the preparation of a false and misleading photograph which was to be taken in such a manner as falsely to indicate that the said James W. Osborne and the said Rae Tanzer had theretofore willingly been photographed together, which said false and misleading photograph, the defendants intended to use as evidence in any judicial proceedings which might ensue in the District Court for the Southern District of New York, after the termination of the said hearing before said commissioner, and in and by assisting and procuring the said Frank D. Safford, after the said hearing before the said commissioner, to flee and secrete himself from the officers of the Government of the United States for the purpose of preventing the said officers of the Government of the United States from discovering the whereabouts of the said Frank D. Safford, whom the defendants well knew and believed to be a material witness in the said prosecution of the said Rae Tanzer.

OVERT ACTS.

1. And in pursuance of the said conspiracy and to effect the objects thereof, the defendants Maxwell Slade and David Slade, at their office at 200 Broadway, in the city, county, and southern district of New York, on the 23rd day of March, 1915, had a conversation with one Clarence Legendre;

2. And further in pursuance of said conspiracy and to effect the objects thereof, the defendant David Slade at and within the southern district of New York, on the 22nd day of March, 1915, took the said Frank D. Safford in an automobile from Greenwood Lake, in the county of Orange, and State of New York, to the home of the said David Slade, in the city and southern district of New York;

3. And further in pursuance of said conspiracy and to effect the objects thereof, the defendant Albert McCullough, did, on March 28, 1915, accompany and go with

the said Frank D. Safford, from the southern district of New York to Rockville Center in the county of Nassau and State of New York;

Against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (37 U. S. C. C.)

H. SNOWDEN MARSHALL,
U. S. Attorney.

(Endorsed:) U. S. District Court. The United States of America *v.* David Slade. Maxwell Slade, Albert J. McCullough. Indictment: Conspiracy to obstruct justice, 37 and 135 U. S. C. C. H. Snowden Marshall, U. S. Attorney. A true bill: _____
Boissevian, Foreman. U. S. District Court, S. D. of N. Y., filed Apr. 13, 1915.

Mr. GARD. Was the fee that your firm was to get a contingent fee?

Mr. DAVID SLADE. Yes, sir; a contingent fee. If you read this transcript you will find, as I said before, that I analyzed the entire scheme there and that I said to Mr. Marshall, "Mr. Marshall, if you had performed your duty as a district attorney you would not have taken the word of Mr. James W. Osborne, your associate in office and your friend for years, and arrested this little girl; you would have made the proper investigation," and I said, "I will present it to those over whom you have no jurisdiction."

Mr. CARLIN. Have you been tried and acquitted?

Mr. DAVID SLADE. No; we were tried for 11 days, and then Judge Russell was unfortunately taken sick, at a stage of the case where it was forced upon them to show that we were not conspired against.

Mr. CARLIN. You did not finish the trial?

Mr. DAVID SLADE. No; just about that time Judge Russell took sick.

Mr. GARD. Would you mind telling the committee the amount of your contingent fee?

Mr. SLADE. Fifty, fifty; that is the usual percentage in New York. I want to impress this upon the committee, and this is a matter for the committee to investigate, that I can give you my word before my Maker that I never would have taken that girl's case if I did not convince myself that she was robbed of the thing that is dearest to a woman.

Mr. CARLIN. Who paid the costs in this case?

Mr. DAVID SLADE. The costs are usually taxed. Do you mean the costs of the court or of the investigation?

Mr. CARLIN. I mean the incidental costs.

Mr. DAVID SLADE. The girl was to pay them.

Mr. CARLIN. Were they to be paid by your firm or the girl?

Mr. DAVID SLADE. The girl; she was to pay them.

Mr. CARLIN. Who was to pay the court costs?

Mr. DAVID SLADE. There are only \$3 of court costs.

Mr. CARLIN. But the witnesses were entitled to their fees.

Mr. DAVID SLADE. Most of her witnesses were her sisters and Max Steuer and Col. Gruber, who is now dead, unfortunately. The whole business would not have amounted to six or seven dollars.

Mr. CARLIN. Who was to pay that amount?

Mr. DAVID SLADE. We were to advance it, and we were to be paid back.

Mr. MAXWELL SLADE. Our contingent provides that she was to pay all costs; that is usual under the New York rules, and we advanced the costs, and we were to get them back, or when we tax the costs we simply tax them as part of the disbursements.

Mr. DAVID SLADE. That is provided by our code.

Mr. NELSON. When did you bring this to the attention of Mr. Buchanan?

Mr. DAVID SLADE. We never heard of him until we read of his action in the newspapers.

Mr. NELSON. Was it before or after he was indicted?

Mr. DAVID SLADE. Before he was indicted, and shortly after he presented the impeachment charges, of which I read in the newspapers. I have been endeavoring during all this time to get somebody to take this matter up. I will say what I said in open court. Here is the statement I made. I said during these entire proceedings: "I have been looking for a man who is courageous, who is honest, and who commands a certain amount of respect at the hands of the community to help me get at the truth as to this case. Is there such a man as I have just mentioned on this bench?" I said that in open court, because I was anxious to get at the true facts of the case.

Mr. CARLIN. What was the response you got?

Mr. DAVID SLADE. The response I got was nothing.

Mr. CARLIN. Have you ever presented this matter to any other Member of Congress asking for impeachment?

Mr. DAVID SLADE. Never. Mind you, I am not asking for vindication for myself, because I am only too anxious, if Mr. Marshall has any courage, to put that case on trial again. I will go to trial to-morrow if he only has the courage to do it.

Thereupon the committee adjourned to meet Wednesday, January 19, 1916, at 10 o'clock a. m.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Wednesday, January 19, 1916.

The committee met at 10.30 o'clock a. m., Hon. Edwin Y. Webb (chairman), presiding.

The CHAIRMAN. Gentlemen, we will come to order. I believe when we adjourned Monday afternoon, it was understood that this hearing on the charges against Mr. H. Snowden Marshall would be continued this morning, and, if that is the understanding, we will hear from Mr. Buchanan any additional evidence he has to adduce on the subject.

Mr. FRANK BUCHANAN. I would like to have Mr. Slade conclude his testimony.

STATEMENT OF MR. DAVID H. SLADE.

Mr. SLADE. Mr. Chairman and gentlemen of the Judiciary Committee, I believe at the last session my brother had referred to some documents which the committee suggested to him that he bring here to-day, and, on his behalf, I brought them here—written charges by ourselves. In addition to these charges, we have attempted to set out certain facts which can be proven, to substantiate the charges which I now submit.

The CHAIRMAN. Have you gone over those charges before in your oral testimony before the committee?

Mr. SLADE. We have preferred these charges here. My associate referred to them when he was here.

The CHAIRMAN. Have you referred to those charges in your testimony orally before the committee?

Mr. SLADE. My brother did.

Mr. BUCHANAN. I understand that those are charges that the committee requested that he supply.

Mr. NELSON. Your name is—

Mr. SLADE. David H. Slade.

Mr. NELSON. A brother of Maxwell?

Mr. SLADE. Yes. I also want to submit so much of Mr. Mayhew's testimony as my brother read from the record, which I believe the committee wanted.

Mr. STEELE. Have you a copy of the information that was referred to in the testimony of your brother—I mean, the affidavit of the postal inspector?

Mr. SLADE. Yes; I brought it here to-day.

Mr. STEELE. That was the basis of the indictment against Rae Tanzer?

Mr. SLADE. She was not indicted upon that. The information was issued upon that and she was arrested—I mean Safford; he was arrested. I am submitting these in duplicate copies, in case the committee wants an extra one—the affidavit of Mr. Mayhew, upon which Mr. Safford was arrested, and also showing he was held in \$12,000 bail in that case. (See Exhibit No. 8.)

EXHIBIT NO. 12, JANUARY 22, 1916.

NEW YORK, *January 21, 1916.*

HON. EDWIN Y. WEBB,

Chairman House Judiciary Committee, Washington, D. C.

ESTEEMED SIR: In pursuance to your suggestion, you will find under same cover the charges, duly signed by me.

We are compiling the names of all the witnesses, and in substance what each will testify, and will forward the same to you, as chairman of the committee, when it is completed.

Very respectfully, yours,

DAVID H. SLADE,
Per A. J. W.

(Dictated but not read.)

EXHIBIT NO. 13, JANUARY 22, 1916.

JANUARY 22, 1916.

Mr. DAVID H. SLADE, *Attorney, 200 Broadway, New York.*

DEAR SIR: I am in receipt of your favor of the 21st, containing statement of charges you make against Hon. H. Snowden Marshall, United States district attorney for the southern district of New York, signed by you.

The same will be filed with the committee for their consideration.

I note that list of witnesses with statement as to what each would testify to, in brief, will follow later.

Very truly,

Chairman.

EXHIBIT NO. 14, JANUARY 19, 1916.

COMPLAINT AGAINST THE HON. H. SNOWDON MARSHALL, UNITED STATES DISTRICT ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK.

Your complainant respectfully represents, that he is a citizen of the United States, a resident of the town of Freeport, Long Island, in the State of New York, and is a member of the firm of Slade & Slade, practicing attorneys, who maintain law offices at No. 200 Broadway in the city and State of New York, and he hereby desires to, and does, complain against the Hon. H. Snowden Marshall, as the United States district attorney for the southern district of New York, and for cause of complaint hereby assigns the following:

A. That said H. Snowden Marshall has employed the powers of said office for the purpose of shielding and from exposing the improper conduct of James W. Osborne in relation to the facts involved in a civil litigation which was pending in the State court of the State of New York, and in protecting the said Osborne and others from prosecution for the violation of the United States laws.

B. That the said H. Snowden Marshall has wilfully and corruptly refused and neglected to prosecute gross and notorious violations of the laws of the United States committed by James W. Osborne and others, of the city and State of New York.

C. That said H. Snowden Marshall has prostituted the office of United States district attorney.

D. That the said H. Snowden Marshall, for the purpose of protecting the private individual interests of Mr. James W. Osborne, used the powers of his said office as United States district attorney to defame, slander, and injure the good name and professional standing of law-abiding citizens of the United States, to their great injury.

E. That the said H. Snowden Marshall corruptly failed and neglected, and refused to prosecute persons who, while acting as witnesses for the United States Government, committed the crimes of perjury, subordination of perjury, and conspiracy in connection with the cases of United States against Rae Tanzer, United States, against Frank D. Safford, and United States against Albert J. McCullough et al.

F. That the said H. Snowden Marshall used the United States grand jury not in the investigation of violations of the United States laws, but for the purpose of attempting to establish a public record which might be used in defense of James W. Osborne, H. Snowden Marshall, Roger B. Wood, and Samuel H. Hershenstein (the last two being assistant United States district attorneys under said H. Snowden Marshall).

G. That the said H. Snowden Marshall corruptly failed to remove certain of his assistant district attorneys who destroyed documentary evidence material in the trial of a pending case in the United States District Court for the Southern District of New York.

H. That the said H. Snowden Marshall corruptly and wilfully caused to be instituted criminal proceedings against Rae Tanzer and others for the purpose of protecting James W. Osborne, a special United States district attorney, and a personal intimate friend of the said H. Snowden Marshall.

I. Because the said H. Snowden Marshall failed and refused to present to the court in trial of causes material and important evidence and has deliberately concealed and either assisted or acquiesced in the concealment or destruction of material and important evidence in pending cases in the United States District Court for the Southern District of New York.

J. That the said H. Snowden Marshall is corrupt, willful, negligent, and unfit to retain the office of United States district attorney for the southern district of New York.

K. That the said H. Snowden Marshall as such United States district attorney has wilfully and persistently violated the laws of the United States in connection with the performance by him of the duties as such United States district attorney for said southern district of New York.

L. That the said H. Snowden Marshall corruptly and wilfully withheld and failed to present before the grand jury material and important evidence in connection with alleged investigations instituted before said grand jury by said H. Snowden Marshall in relation to the cases of United States against Rae Tanzer and United States against Albert J. McCullough et al.

M. The said H. Snowden Marshall corruptly and wilfully refused and neglected to take cognizance of highly improper and unlawful conduct of some of his assistant district attorneys in connection with the attempted performance by them of official duties as such assistant United States district attorneys.

N. That the said H. Snowden Marshall corruptly and wilfully participated, or acquiesced, in the presentation to the court in the trial of cases alleged evidence which he

knew to be untrue, and manufactured, or assisted in the manufacture of, and attempted to manufacture, such alleged evidence.

Your complainant, for the purpose of presenting in fuller detail some of the facts in connection with the foregoing charges, hereby respectfully submits the following:

1. On the 16th day of March, 1915, your complainant was, and for a long time prior thereto had been, a member of the firm of Slade & Slade, consisting of Maxwell Slade, a brother of the complainant, and your complainant.

2. On said 16th day of March, 1915, your complainant's firm, acting as attorneys for one Rae Tanzer, of the borough of Manhattan, city and State of New York, instituted a civil suit seeking damages for breach of promise to marry and seduction against James W. Osborne, of said city and State of New York, in the county of Kings.

3. On said 16th day March, 1915, and for some time prior thereto, the defendant in said civil suit, James W. Osborne, occupied an official position as a special United States district attorney, and was in charge of, or participated in, criminal causes pending in the Federal courts of the United States for the southern district of New York, and had an office in the Federal building, in said city of New York, which was a part or connected with the official headquarters of H. Snowden Marshall, as such district attorney.

4. The said James W. Osborne and the said H. Snowden Marshall have for many years prior to March 19, 1915, and ever since been personal, warm, and intimate friends, and James W. Osborne, jr., a nephew of said James W. Osborne, was prior to March 19, 1915, and still is, an assistant district attorney under said H. Snowden Marshall.

5. The allegations in the complaint of the civil suit of Rae Tanzer against James W. Osborne charge the said James W. Osborne, under a promise of marriage, with having seduced the plaintiff in said action, and as a result of the institution of said suit, the personal, political, and professional standing of said James W. Osborne became involved, and the marriage status of said James W. Osborne was endangered.

6. After the institution of the suit by Rae Tanzer against James W. Osborne, the said James W. Osborne realizing the seriousness of the position that he was in if the plaintiff in said suit should upon the trial in the State court establish the allegations therein, the said James W. Osborne thereupon procured the assistance of said H. Snowden Marshall, as district attorney, for the purpose of restoring his standing before the community and his wife.

7. For the purpose of accomplishing the desired end, namely, to restore his standing before the community and his family, the said James W. Osborne conspired, confederated, and agreed with the said H. Snowden Marshall, Roger B. Wood, and Samuel H. Hershenstein (the last two being assistant district attorneys under the said H. Snowden Marshall), and in pursuance to said conspiracy and to effect the object thereof, the said H. Snowden Marshall, Roger B. Wood, and Samuel H. Hershenstein, and other persons to your complainant unknown, did, and corruptly failed to do, the following acts:

A. On or about the 19th day of March, 1915, the said James W. Osborne, wilfully, maliciously, and without any just cause, made, or caused to be made, an alleged complaint against the said Rae Tanzer, charging her with a commission of the offense of attempting to defraud the said James W. Osborne by the use of the United States mails.

B. The said H. Snowden Marshall and his confederates, including the said James W. Osborne, wilfully, maliciously, deliberately, and without any just cause or excuse, directed and procured a warrant to be issued against the said Rae Tanzer, charging her with an alleged offense of using the mails for the purpose of defrauding the said James W. Osborne, and in consequence of said warrant of arrest the said Rae Tanzer was apprehended and incarcerated in the Tombs, which is a prison.

8. The only reason for the arrest of said Rae Tanzer was to place her in fear, and thereby intending to cause said Rae Tanzer to withdraw, or repudiate, the just claim that she had against the said James W. Osborne, based upon the allegations in her complaint in the civil suit instituted by her as aforesaid, of all of which facts the said H. Snowden Marshall had due notice, or by the exercise of slightest diligence would have known;

9. The warrant of arrest was issued by one, Clarence S. Houghton, a United States commissioner for the southern district of New York, and the only evidence presented to said commissioner upon which said warrant was issued was the affidavit of James W. Osborne, dated the 19th day of March, 1915, and a letter written by said Rae Tanzer, dated December 27, 1914, and mailed by said Rae Tanzer to said James W. Osborne, on or about said date, which in due course was received by said James W. Osborne, a copy of said letter being appended hereto and marked Exhibit A," and made a part hereof;

10. Said Commissioner Houghton did not demand or require any further evidence to be presented before him, and no evidence in fact was presented before him other than said affidavit of Osborne's and said letter, Exhibit A;

11. If the said Hon. H. Snowden Marshall acted in good faith, and in the honest performance of his public duty as such official, and without any malicious motives, or intent, he would not have caused said warrant to be issued, because no evidence whatever existed prima facie showing that any laws of the United States were violated, and the affidavit, or the contents of said letter of December 27, 1914, did not warrant the issuance of any criminal process against the said Rae Tanzer;

12. On or about the 17th day of March, 1915, and being within a day or two after the institution of the civil action by Rae Tanzer against James W. Osborne, the said H. Snowden Marshall maliciously, deliberately, and falsely issued a statement to the New York papers, which was extensively published, in which he substantially charged your complainant's firm with being parties to an attempt to blackmail the said James W. Osborne, and such charge was without any justification therefor, and without any cause whatever, but for the express purpose of injuring the character, reputation, and professional standing of your complainant's law firm, and for the further express purpose of restoring the standing of said James W. Osborne in the community by means of the public press;

13. As a result of the issuance of the warrant of arrest against the said Rae Tanzer aforesaid, she was brought on for a hearing before Commissioner Houghton on the 24th day of March, 1915, and the only evidence presented before said commissioner, in behalf of the Government, was the letter of December 27, 1914, marked "Exhibit A," and the testimony of James W. Osborne, which will be found in detail in Exhibit B, which accompanies this complaint, and made a part hereof.

14. In the course of the proceedings and hearings before said Commissioner Houghton one Frank D. Safford, a clerk of the Kensington Hotel, was produced as a witness in behalf of said Rae Tanzer, and he testified as will more fully appear by said Exhibit B.

15. As a part of the conspiracy between the said H. Snowden Marshall, and other persons to your complainant unknown, Roger B. Wood, while acting as assistant district attorney, directed one Howard B. Mayhew to execute and swear to an affidavit a copy of which is hereto annexed and marked "Exhibit C," and made a part hereof, and in consequence of said affidavit a warrant was issued against the said Frank D. Safford, charging him with the commission of the crime of perjury, and he was arrested and confined in prison for a long time.

16. The said Mayhew, subsequently under oath in the trial of the case of the United States against Slade et al., admitted that he did not know the said Frank D. Safford, and had no knowledge whatever of the facts stated in said affidavit charging the said Safford with perjury, and that the only reason why he executed and swore to said affidavit was because he was directed to do so by Roger B. Wood, an assistant district attorney under said Marshall. A copy of the testimony of said Mayhew, page —, of Exhibit D is hereby made a part hereof. (See Exhibit No. 15.)

17. For the purpose of carrying out said conspiracy, and to effect the object thereof, namely, to discredit said Rae Tanzer, her witnesses, attorneys, and investigators, the said H. Snowden Marshall, James W. Osborne, and others caused a grand jury to be impaneled, and summoned witnesses to appear who did in fact appear and were examined by said H. Snowden Marshall and his assistants, only to such extent as served the object of said conspiracy, irrespective of the actual truthful facts, as will more fully appear by the grand jury minutes in the custody or under the control of H. Snowden Marshall, reference to which is hereby respectfully made. The object of said Marshall, James W. Osborne, and other persons and parties to the conspiracy, being to institute criminal proceedings against every person in any way connected with said Rae Tanzer, either in the capacity of witnesses, attorneys, investigators, or otherwise, and thereby seeking maliciously, wilfully, and deliberately to discredit all of said persons, and to create an atmosphere which would tend, before the public—by means of the press—to exculpate the said James W. Osborne from the charge embraced in the civil complaint of Rae Tanzer against him, and to create a condition which might prevent the trial of the civil action against said James W. Osborne.

18. A subpoena ducus tecum was issued upon the instigation of said H. Snowden Marshall, and served upon one, John J. Hannon, of New York (the owner of a private detective agency, doing business in the city of New York, who was employed by your complainant's firm to investigate the facts presented to your complainant contained in an affidavit sworn to by said Rae Tanzer), and the said Hannon was directed to produce, and did produce, copies of reports made to your complainant, which contained full and detailed information of facts ascertained by said investigator, which facts, and the witnesses through whom such facts could be proved, showed completely

the justness of the claims made by said Rae Tanzer, as contained in her complaint against James W. Osborne, and the said H. Snowden Marshall in consequence of the contents of said reports, and other information he then had, actually knew that said Rae Tanzer, and your complainant's firm, and the other persons hereinafter mentioned, acted in complete good faith, honorably, and honestly in all of their actions, either as investigators, plaintiffs, or counsel for said Rae Tanzer, but H. Snowden Marshall, James W. Osborne, and other persons to your complainant unknown, acting in conjunction with the said James W. Osborne and said H. Snowden Marshall, maliciously, willfully, deliberately, and contrary to the obligations of the said H. Snowden Marshall, as United States district attorney, concealed from said grand jury the facts contained in said reports, and further concealed from said grand jury knowledge that said H. Snowden Marshall acquired from other persons, of facts which completely established the good faith, honesty, and integrity of your complainant's firm, and the individual members thereof, and other persons who were interested in behalf of the said Rae Tanzer, and who were subsequently indicted at the instigation of said H. Snowden Marshall, as hereinbefore stated.

19. In further pursuance to said conspiracy, and to effect the object thereof, the said H. Snowden Marshall, corruptly, willfully, and maliciously prevented one, Clarence Le Gendre, of the city and State of New York, from testifying before the grand jury, as to his knowledge of facts pertaining to a composite photograph of Rae Tanzer and James W. Osborne, which facts were as follows:

A. On or about the 16th of March, 1915, Mr. Clarence Le Gendre, a newspaper reporter connected with a publication known as the New York World, called at the law office of your complainant and inquired whether your complainant, as Rae Tanzer's counsel, had a photograph of Rae Tanzer and James W. Osborne, which the New York World would like to publish. Your complainant stated he did not have such photograph, and thereupon some suggestion was made in relation to getting James W. Osborne and Rae Tanzer together, so that Mr. Clarence Le Gendre could take such photograph. Your complainant refused to agree to that suggestion, and in substance informed Le Gendre that Miss Rae Tanzer being in her then frame of mind, if she met Mr. Osborne in public a scandal would be caused. Clarence Le Gendre thereafter saw H. Snowden Marshall, as will more fully appear by a statement prepared by said Clarence Le Gendre, accompanying this complaint, marked "Exhibit E," and made a part hereof.

B. Your complainant is informed, and believes, that the said H. Snowden Marshall, after receiving from Le Gendre a copy of a composite photograph made or caused to be made by said Le Gendre (under the circumstances stated in Exhibit E), attempted, through one Baker, a United States post-office inspector, to cause said composite photograph to be delivered to your complainant's law firm, for the purpose of creating evidence in support of an allegation that the said H. Snowden Marshall then intended to incorporate, and which he caused subsequently to be incorporated, in the indictment against your complainant and others on the subject that your complainant and others conspired to procure a fake photograph with the intention of using such fake photograph in a judicial proceeding.

C. Your complainant is informed, and believes, that the said Baker aforesaid refused to comply with the request of said H. Snowden Marshall to take said photograph over to the law office of your complainant, and the said H. Snowden Marshall caused the said Clarence Le Gendre to call up your complainant's law office on the telephone from the Federal Building, and to talk with your complainant's law office in respect to the composite photograph—all with the intention on the part of the said H. Snowden Marshall, as a part of said conspiracy, to create a situation which might tend to justify the contemplated official action on the part of said Marshall in the procuring of the subsequent indictments hereinafter referred to.

20. At the time of the hearings instituted by said H. Snowden Marshall before said grand jury, the said Le Gendre was called as a witness, and instead of being permitted to state all the facts within his knowledge on the subject of said composite photograph, as more fully appears, Exhibit E, the said Le Gendre, your complainant is informed and believes, was inquired of on material facts substantially as follows:

"Did you go to Slade's office and have a conversation with the Slades about the picture of Rae Tanzer and James W. Osborne together?—A. Yes.

"Q. Is this the picture you subsequently took?—A. Yes."

And said Le Gendre was thereupon dismissed from further attendance before said grand jury.

21. In consequence of the answers given by said Le Gendre before said grand jury, as aforesaid, and such other evidence, if any, as will be disclosed by the grand-jury minutes in the possession of said H. Snowden Marshall, the indictments against your complainant and others were found by said grand jury, and thereupon all of said

defendants, including your complainant, were taken into custody, and in due course furnished bail.

22. The conduct of H. Snowden Marshall and others acting with him in respect to said alleged composite photograph was corrupt, malicious, and willful, and all of said acts were done by said H. Snowden Marshall and others acting with him in consequence of said conspiracy and for the purpose of effecting the object thereof, as aforesaid.

23. Rae Tanzer's two sisters, and Frank D. Safford, all of whom were witnesses in her behalf, in the hearing before said Commissioner Houghton in the proceedings against Rae Tanzer, all testified in substance to the effect that James W. Osborne was the man who was seen by these witnesses in the company of Rae Tanzer, but James W. Osborne in turn denied ever having seen Rae Tanzer, and because of such testimony the said Frank D. Safford, and sisters of said Rae Tanzer, were all at the instigation of H. Snowden Marshall, indicted and charged with alleged perjury, and your complainant, and his brother, Maxwell Slade, a member of the firm of Slade & Slade, and one Albert J. McCullough, an employee of said Hannon's Detective Agency, were indicted for the alleged crime of conspiracy, as will more fully appear by the indictments annexed hereto, and marked Exhibit "F." All of said proceedings were instituted by said H. Snowden Marshall in consequence of said conspiracy for the purpose of effecting the object thereof, and without any just or reasonable cause therefor, but said H. Snowden Marshall acted corruptly and maliciously, and for the purpose of serving the interests of said James W. Osborne, and to protect said James W. Osborne from exposure on the facts involved in said civil litigation of Rae Tanzer.

24. At the time of the commission of all the acts herein set forth by said H. Snowden Marshall he knew, or had reasonable cause to know, that the said James W. Osborne was guilty of the acts charged against him by said Rae Tanzer in said civil action, and said H. Snowden Marshall knew, and had reasonable cause to know, that your complainant, and other members of your complainant's firm, Maxwell Slade and said McCullough, and all the other persons indicted as aforesaid, were innocent of any wrongdoing, but H. Snowden Marshall, personally, committed all of said acts, or advised, counseled, and planned their commission by his assistant district attorneys and others, for the purpose of carrying out said conspiracy, and to assist in exculpating his personal friend, the said James W. Osborne, and not by the reason of unlawful acts of commission or omission on the part of your complainant, or the other persons hereinbefore mentioned, involving a violation of any United States laws.

25. At the time of the arrest of Frank D. Safford, aforesaid, the said H. Snowden Marshall, or his assistants acting by his authority, for the purpose of preventing the said Frank D. Safford from regaining his liberty upon a reasonable, fair, and just bond, caused the bond to be fixed in the first instance by said Houghton, as such commissioner, in the sum of fifteen thousand (\$15,000) dollars, under the complaint charging said Safford with perjury, and said bond was afterwards reduced to twelve thousand (\$12,000) by said commissioner.

26. Said H. Snowden Marshall acting either personally, or through his assistants, well knowing that said Frank D. Safford had no financial means, corruptly, maliciously, and willfully caused such excessive and prohibitive bail to be fixed for the purpose of preventing said Safford from regaining his liberty during the pendency of said alleged proceedings against him, and for the further purpose, as your complainant justifiably believes, to induce said Safford to make false and untruthful statements in respect to the testimony he gave before Clarence S. Houghton, as United States commissioner, upon the subject of identifying James W. Osborne as the person who visited the Kensington Hotel with Rae Tanzer at the time in question. As part of the plan to bring about such result, the said Frank D. Safford, on the Easter Sunday morning in April, 1915, during one of the most severe snowstorms of recent years, was walked through the streets of New York and brought before Joseph A. Baker, who is connected in the capacity of investigator in the Department of Justice, as your complainant is informed and believes, and said Baker while questioning the said Safford, among other things, said:

"Why, I suppose by this time you are mistaken about Mr. J. W. Osborne being the man that you identified?"

"And now, Mr. Safford, are you not mistaken in identifying the man?"

"And, well, the girl has changed her mind."

Said statements, and others, as will more fully appear by reference to the printed book on appeal in the case of Safford against the United States, which contains the testimony given by said Safford, will disclose that an effort was made by said Joseph A. Baker to induce the said Safford to recant the testimony that he gave in the hearing before Commissioner Clarence S. Houghton. In further part of said plan the said Frank D. Safford was not confined immediately after his arrest in the Tombs of New

York, where Federal prisoners are usually confined, but was placed in the Greenwich Street Police Station, in order to prevent Safford's friends having access to him after his arrest, and by reason of all of said acts the said H. Snowden Marshall as part of said conspiracy became, and is guilty of and of the attempt to procure untruthful and false testimony, and to induce the said Frank D. Safford to make untruthful statements on material subjects which were testified to by him in the hearing before said Commissioner Houghton.

27. After the arrest of said Frank D. Safford he requested permission of the grand jury to appear and testify, and the said Safford agreed to, and did waive immunity, while so testifying. H. Snowden Marshall, as such district attorney, personally appeared before the grand jury, and propounded questions to the said Frank D. Safford, and the said Frank D. Safford, under oath before said grand jury, reiterated the facts that he had testified to before Commissioner Houghton, and the said H. Snowden Marshall, in the presence and hearing of said grand jury, said to Frank D. Safford, in substance:

"You are a liar. Go back to your dungeon."

and other statements that will more fully appear in the stenographic minutes of said examination taken before the said grand jury, which are now, or should be, as your complainant believes, in the custody, or under the control, of said H. Snowden Marshall. Such conduct on the part of said Marshall was malicious, oppressive, and corrupt, and said statements of said Marshall had the effect of evidence before the grand jury, and said statements were made by said Marshall to influence the judgment of said grand jury.

28. After said Safford was indicted, he was brought on for trial before Mr. Justice Hough and a jury sitting in the District Court of the United States for the Southern District of New York. The jury before whom Safford was tried prior to said trial for several weeks, as your complainant is informed and believes, was engaged in the trial of civil cases only. The criminal proceeding against Safford is the only criminal case that was ordered to be tried before said jury, though other parts of the United States District Court were engaged in the trial of criminal causes. Your complainant does not feel at liberty to state facts based upon hearsay information that your complainant has received from various sources in relation to the reasons why said case was referred to said jury, but your complainant respectfully submits for consideration the printed record of the trial of said case before said jury, which is self-explanatory and clearly discloses, in part at least, the atmosphere surrounding the trial of the case against said Safford. Your complainant respectfully suggests that upon an examination of the whole situation deductions will be forced which will show that a miscarriage of justice took place in the conviction of said Safford for the alleged crime of perjury.

29. After the conviction of said Safford a writ of error to the circuit court of appeals was sued out, and Roger B. Wood, an assistant district attorney under said Marshall, appeared before the circuit court of the United States and demanded a thirty thousand (\$30,000) dollar bond, which was exorbitant, prohibitive, and oppressive, and was done as your complainant believes under the direction, knowledge, or acquiescence of said H. Snowden Marshall, all for the purpose of corruptly and willfully preventing the said Safford from regaining his liberty during the pendency of the writ of error before said circuit court of appeals. The circuit court of appeals fixed the bond on such writ of error in the sum of seven thousand five hundred (\$7,500) dollars, which your complainant secured in behalf of said Safford, because your complainant was firmly of the fixed belief that a great injustice was done said Safford.

30. During the hearings before the grand jury which indicted your complainant, and others hereinbefore mentioned, one, Edwin W. Wilcox, a lawyer in the employ of, and with, James W. Osborne in his office, and reputed to be a partner, occupied the room of Samuel H. Hershenstein, an assistant district attorney, and said Wilcox personally first spoke to persons who were alleged to be witnesses, to be used before said grand jury, and said Wilcox directed only such persons to be brought before the grand jury as said Wilcox first determined should be so brought. All these acts were done with the knowledge and acquiescence of H. Snowden Marshall and his assistant district attorneys.

31. Prior to the hearings before said grand jury aforesaid, said Wilcox, in the company of one Swain, and Mayhew (both post-office inspectors attached to the district of New York), with the knowledge of Samuel H. Hershenstein, Roger B. Wood, and said Marshall, visited two (2) hotels of questionable repute in the city of New York for the purpose of removing, concealing, or destroying hotel registers which, your complainant is informed, contained information showing visits to said hotels by James W. Osborne and Rae Tanzer, and such evidence being of the utmost materiality and importance, as tending to establish the relationship between the said James W.

Osborne and the said Rae Tanzer, and said evidence being of importance in the civil proceedings instituted by said Rae Tanzer against the said Osborne, hereinbefore referred to, and in consequence of the efforts of said Wilcox, Mayhew, and Swain, your complainant is informed, said hotel registers disappeared and were not accessible.

32. Said H. Snowden Marshall, before the procurement by him of the indictments against your complainant, and the others aforesaid, personally interviewed several persons who possessed knowledge of facts showing the good faith of Rae Tanzer in the institution of her proceedings against James W. Osborne, and of the good faith of your complainant, his firm, and others proceeded against by said H. Snowden Marshall, in relation to their conduct and connections with the proceedings instituted by said Rae Tanzer against James W. Osborne, but the said H. Snowden Marshall corruptly, unlawfully, maliciously, and willfully failed to present such evidence before the grand jury, well knowing that if such evidence had been presented, that the grand jury would not find any indictment against your complainant, and the others hereinbefore mentioned. The failure on the part of H. Snowden Marshall to present, or cause to be presented, such evidence was for the purpose of carrying out the conspiracy, and to effect the object thereof, and to corruptly, maliciously, and willfully injure and discredit your complainant, and the other persons aforesaid, and for the further purpose of protecting his personal friend, James W. Osborne, from exposure for his conduct in his relations with Rae Tanzer, and thereby said H. Snowden Marshall used the powers of his office as district attorney to further private interests in a civil litigation pending in a State court.

33. The said H. Snowden Marshall, James W. Osborne, and others to the complainant unknown, further corruptly conspired, confederated, and agreed to suborn perjury, and to that end in view all of said parties induced several persons, and among them being one Rose Kaiser, to appear on March 19, 1915, at the law office of your complainant, and to present to your complainant's office a letter purported to have been written by "Oliver Osborne," and subsequently in pursuance to said conspiracy said Rose Kaiser was induced to appear and testify as a witness as will more fully appear by Exhibit "G," page —, accompanying this complaint. Where, in truth and in fact, the said H. Snowden Marshall, and the other persons mentioned, well knew or had reasonable grounds to believe, that the said letter was in the handwriting of James W. Osborne, and was specially prepared for the purpose of creating a witness who could, and would, appear in court and give perjured testimony, which would tend to exonerate said James W. Osborne from the charge made against him by Rae Tanzer, and for the purpose of using said letter as evidence tending to implicate the others unlawfully indicted by said Marshall.

34. As part of such scheme and unlawful conspiracy, said H. Snowden Marshall instituted without warrant in law a proceeding before the grand jury and summoned before it the members of your complainant's firm for the purpose of procuring possession of the letter delivered to your complainant's law firm by said Rose Kaiser, and by such means the said H. Snowden Marshall corruptly abused the process of the grand jury, and used said grand jury for an unlawful purpose and without lawful occasion, and by such means did procure said letter from your complainant's firm. Said proceedings before the grand jury were had under the guise of a lawful proceeding, but your complainant is informed that no lawful proceedings were then pending which authorized said H. Snowden Marshall or his assistants to summon and examine the members of your complainant's law firm, or to procure the possession of said letter.

On other occasions said H. Snowden Marshall acquiesced in, and permitted, his assistant district attorneys on the eve of trials in the United States District Court in the Southern District of New York to summon the attorneys for the defense, and such persons as the district attorney's office believed may be witnesses for the defense, and examine such persons to ascertain what facts they knew in relation to such pending case, and thereby procure information under the guise of a lawful investigation before such grand jury, whereas in fact such course was for the purpose of learning beforehand what evidence existed which might be relied on by the defense.

35. The said H. Snowden Marshall, James W. Osborne, and William J. Swain, a post-office inspector stationed at the city of New York, well knew, or had reasonable and just cause to know, that William H. Kitchen knew and could truthfully testify that James W. Osborne was the man who visited the Kensington Hotel on October 18, 1914, with Rae Tanzer, and yet the said H. Snowden Marshall acquiesced and permitted the said William J. Kitchen to appear in court and under oath testify that said James W. Osborne was not the man who, with Rae Tanzer, visited said Kensington Hotel on the date in question. At the time said testimony was given by said Kitchen, and for sometime prior thereto, the said H. Snowden Marshall had in his possession reliable evidence proving that said William J. Kitchen prior to the time that he testified had identified a photograph of James W. Osborne as the man who

did in fact visit his hotel, and had other evidence proving that said Kitchen admitted that James W. Osborne was the man who visited on the date in question with Rae Tanzer his said hotel at the time and place in question, but the said H. Snowden Marshall corruptly and willfully refused and failed to make proper investigations for the purpose of ascertaining the true facts in respect to the testimony given by said William J. Kitchen, and the conduct of said H. Snowden Marshall was due to a desire on his part of aiding and assisting the said James W. Osborne to apparently be cleared from the charges made against him by said Rae Tanzer, and for the purpose of reinstating the said James W. Osborne before the community of the city of New York, and before the family of said James W. Osborne, and as a result of such acts the said H. Snowden Marshall failed and neglected to proceed against the said William J. Kitchen with a view of ascertaining whether the said William J. Kitchen committed a crime against the laws of the United States.

36. One William M. Darling, who was a witness, and had personal knowledge of material facts showing the good faith and honesty of your complainant, and the other members of your complainant's firm, and the other defendants in all of said indictments, was apprehended in Pennsylvania by the directions of H. Snowden Marshall, as a material witness, and was brought to New York and incarcerated in the Tombs for a period of 24 days, and while so detained the said Snowden Marshall, or his said assistants and agents, with the knowledge of said Marshall, attempted to, and did in fact, induce the said Darling to commit perjury upon material and important facts, as will more fully and convincingly appear by the examination of said Darling in court in the trial of the case of United States against your complainant and others; a copy of said transcript will accompany this complaint, and marked "Exhibit G," page reference to which is respectfully made. Because, however, of the desire on the part of said H. Snowden Marshall to protect the interests of said James W. Osborne, the said H. Snowden Marshall failed to take any proceedings against the said William M. Darling, or against the persons who induced the said Darling to untruthfully testify as aforesaid.

37. The said H. Snowden Marshall knew, or had reasonable grounds to believe, and did believe, that said James W. Osborne, for the purpose of diverting private and public attention from himself in relation to the charges made against him by said Rae Tanzer in her civil action aforesaid, conspired with others to create a situation from which it would be made to appear that James W. Osborne was not the person who had relations with Rae Tanzer, and as a part of such fictitious facts a person calling himself "Oliver Osborne" was induced to appear before the wife of said James W. Osborne and state alleged facts exonerating said James W. Osborne from the charges made against him by said Rae Tanzer, to which facts the said James W. Osborne, Edwin W. Wilcox, subsequently appeared and in court testified under oath. The said H. Snowden Marshall, well knowing said facts, or having reasonable ground to know said facts, made no effort to judicially ascertain the truthful facts on the subjects testified to by said Wilcox and said James W. Osborne.

38. The said H. Snowden Marshall, for the purpose of shielding and protecting the said James W. Osborne and for the purpose of avoiding the exposure of the scheme to create a fictitious situation and fictitious material facts, failed and neglected to cause a thorough and exhaustive search to be made for the purpose of locating the person calling himself "Oliver Osborne," and failed and neglected to use reasonable efforts to produce in court as a witness the said alleged "Oliver Osborne," well knowing that if the said "Oliver Osborne" had been produced and was examined in court under oath it would have appeared that testimony given by some of the Government's witnesses was untruthful and that a fraud was committed upon the court by said James W. Osborne and such persons as acted with him creating artificial facts in respect to said "Oliver Osborne," and the statements purported to have been made by him. Such failure was partly due to the specific desire on the part of the said H. Snowden Marshall to convict Frank D. Safford of perjury, thereby apparently and temporarily, at least, cause a situation which would lead the public to believe that James W. Osborne was innocent of the charges made against him by Rae Tanzer, and further—by implication at least—to publicly defame, slander, libel and take the good name of said Frank D. Safford and others, all of whom were peaceful and law-abiding citizens of the United States.

39. The said H. Snowden Marshall, acting personally, or through his assistant district attorneys, and others to your complainant unknown, and the said James W. Osborne, in a great many other particulars too numerous to here state, are guilty of concealing material facts, and in destroying and manufacturing facts subsequently used as evidence in court, and in the abuse of legal process, all of which was done for the purpose of protecting and serving the private interests of James W. Osborne, and in derogation to the just and lawful rights of your complainant, and the other persons hereinbefore mentioned.

40. By reason of the facts aforesaid, and other existing facts too numerous to mention in this complaint, the said H. Snowden Marshall is not a fit, proper, or suitable person to exercise the duties of the office of United States district attorney.

41. The honor and integrity of the United States, the due administration of justice, the lawful rights of your complainant as a citizen of the United States, and the lawful rights of the other citizens hereinbefore described, demand that a complete, full and exhaustive investigation be made of the facts stated in this complaint, and such other facts as may exist involving the conduct of the said H. Snowden Marshall as United States district attorney, and the conduct of such others as participated with said H. Snowden Marshall, or in connection with any of the facts herein stated, or such other facts as may exist.

To that end in view your complainant respectfully prays that some proper and lawful proceeding be instituted, and some proper and suitable person, other than members of the district attorney's staff in the southern district of New York, be designated to take charge thereof, and that a full, thorough, exhaustive, and complete investigation be made of all the facts herein recited, and your complainant further prays that if an investigating body is created with power to summon before it witnesses that Mr. H. Snowden Marshall and James W. Osborne be not permitted to testify unless they in the first instance waive immunity so that whatever testimony may be given by them could be lawfully used in any future proceedings.

Your complainant stands ready to deliver to any person that may be designated to take charge of this complaint a large volume of evidence, the names, and residences of various witnesses who, if called, can specifically and substantially establish the facts in this complaint, and to render any other lawful assistance for the purpose of such investigation.

And your complainant will ever pray.

DAVID H. SLADE.

EXHIBIT No. 15, JANUARY 19, 1916.

The direct and cross-examination as read before the committee, page 835 of the minutes to 842.

DIRECT TESTIMONY OF HOWARD B. MAYHEW.

Direct examination by Mr. WOOD (p. 835-837):

Q. Now, Mr. Mayhew, what is your occupation?—A. Post-office inspector.

Q. How long have you been a post-office inspector?—A. Since 1906.

Q. Were you a post-office inspector in March of this year?—A. I was.

Q. Were you assigned by the post-office inspector in charge to the case of the United States against Rae Tanzer?—A. By the acting post-office inspector in charge.

Q. While you are assigned on a case what are your duties?—A. Investigate it and follow it until the investigation is complete and our report submitted.

Q. Look up the witnesses?—A. Yes; that is part of our duties.

Q. Now, Mr. Mayhew, do you remember the day of the hearing down here before Commissioner Houghton on the 24th of March in the case the United States against Tanzer?—A. I do.

Q. Had subpoenas been issued prior to that time for the witness Frank D. Safford?—A. There had.

Q. Do you know in whose hand that subpoena had been placed?—A. In one of the deputy marshals.

Q. A deputy United States marshal?—A. Yes.

Q. Were you present when the subpoena was issued, Mr. Mayhew?—A. I don't—I have no recollection now, but I may have been and I may not have been.

Q. Now, were you here present in this room on that Wednesday afternoon when the hearing opened?—A. I think I was. I was in and out frequently. I don't know whether I was here just when it happened or not.

Q. Did you see the witness Frank D. Safford come into the courtroom?—A. I saw him come to that position [indicating].

Q. Where did you see him?—A. Probably about where the second bench is, I should say.

Q. Well, go down there and show us, Mr. Mayhew.—A. (Witness leaves stand.) Approximately here [illustrating].

Q. Where were you standing?—A. I was standing here [indicating].

Q. You say you saw the witness Safford come in?—A. Yes.

Q. Had you ever seen him before?—A. No.

Q. How do you know it was Safford?—A. Mr. Kitchen told me it was Safford.

Cross examination by Mr. LITTLETON (p. 839-842):

Q. Mr. Mayhew, you made an affidavit on the 2d day of April, didn't you, before Commissioner Houghton, in which you swore to a complaint charging Mr. Safford with the crime of perjury?—A. Yes, sir.

Q. Who told you to make that affidavit?—A. I think I had some conversation with Mr. Wood about that.

Q. Did he tell you to make it?—A. I think it was made at his request or his suggestion.

Q. You did not know Safford before the trial, did you?—A. Never had seen him.

Q. Or Rae Tanzer?—A. Never.

Q. Or James W. Osborne?—A. I did not know him until this case commenced.

Q. Did you know anything about the facts concerning the civil suit brought by Rae Tanzer against James W. Osborne?—A. Only what I had read in the paper.

Q. Do you anything about the merits of that question?—A. Not a thing.

Q. Do you know anything about the circumstances which took place out at Plainfield, N. J., at the Kensington Hotel?—A. Nothing at all.

Q. Do you know anything about the two persons who went at that time on the 18th of October, 1914, and registered under the name of O. Osborne and Mrs. O. Osborne?—A. No.

Q. Is this the affidavit or copy of it that you swore to [handing witness paper]?—A. I assume it is; I am not familiar with it; I don't know.

Mr. LITTLETON. I ask to have it marked for identification.

(Marked "Defendants' Exhibit P" for identification.)

Q. Now, Mr. Mayhew, at the bottom of this affidavit—

(Question withdrawn.)

Q. Did you not say in your affidavit in this complaint and did you not swear to it—

Mr. WOOD. I object. I object if the court please, to reading anything from that affidavit unless it is offered in evidence.

Mr. LITTLETON. I offer it in evidence.

Mr. WOOD. No objection.

(Marked "Defendants' Exhibit P" in evidence.)

Q. Did you not swear in this complaint that the said Frank D. Safford did further declare, depose, and swear that he assigned James W. Osborne to Room 15 in the said Hotel Kensington on the said 18th of October, 1914?—A. Assigned a man that he identified as James W. Osborne.

Q. I say, didn't you swear to that?—A. I am reading you the affidavit now. My signature is on the original of that. I swore to it.

Q. Didn't you swear to this: "That whereas in truth and in fact the said Frank D. Safford then and there well knew that the said James W. Osborne was not the man who accompanied the said Rae Tanzer to the hotel in Plainfield, N. J., on the said 18th day of October, 1914, and the said Frank D. Safford then and there falsely, corruptly, wilfully, and did declare and depose and swear to that which was not true?"—A. Yes.

Q. And then didn't you swear to that yourself at the bottom?—A. Yes, sir.

Q. And didn't you do that under the direction of Mr. Wood?—A. Yes, sir.

(Testimony read in connection with the statement concerning the Kaiser incident of coming to office of Slade & Slade, pages 511 and 512 of the minutes.)

Q. Let me ask you and see if I can refresh your memory; you say you have a rather bad memory anyhow; see if I can help you on it; don't you remember Mr. Maxwell Slade handed the picture to Miss Kaiser and she looked at it and she said, "Yes, that is the man; except that I never saw him in such a collar"?—A. She did say it.

EXHIBIT NO. 16. JANUARY 19, 1916.

(James W. Osborne's affidavit before Houghton found in printed book on appeal in Safford against United States, pages 577 and 578, of which the following is a copy.)

Approved: Roger B. Wood.

Before Hon. Clarence S. Houghton, U. S. Commissioner, Southern District of New York.

Complaint: Violation No. 215 U. S. C. C. 1730.

UNITED STATES OF AMERICA v. RAE TANZER.

SOUTHERN DISTRICT OF NEW YORK, ss:

James W. Osborne, being duly sworn deposes and says that on or about the 1st day of October, 1914, the above-named defendant, Rae Tanzer, at the Southern District of New York and within the jurisdiction of this court, did unlawfully, wilfully, know-

ingly, and fraudulently devise and intended to devise a scheme and artifice to defraud the deponent, James W. Osborne, and to obtain money and property from him, the said James W. Osborne, by means of false and fraudulent pretenses and representations; that the said scheme and artifice to defraud so devised and intended to be devised by the defendant was as follows: That the defendant, Rae Tanzer, would falsely and fraudulently represent and pretend that the said James W. Osborne had promised to marry her and had seduced her and to commence an action in the Supreme Court of the State of New York and within the jurisdiction of this court against the said James W. Osborne and to allege in the complaint in such action so to be brought as aforesaid that the said James W. Osborne had promised to marry her and had seduced her, all of which said allegations were known by the defendant, Rae Tanzer, to be false and fraudulent and were to be made by the said defendant, Rae Tanzer, for the purpose of obtaining from the said James W. Osborne a large sum of money and property; and for the purpose of executing the said scheme and artifice so devised and intended to be devised by the defendant, Rae Tanzer, the said defendant, on or about the 16th day of February, 1915, did place and cause to be placed in the Madison Square Station, a branch post office station of the United States, within the southern district of New York and within the jurisdiction of this court, an authorized depository for mail matter, to be sent and delivered, a certain letter addressed as follows: "Mr. James W. Osborne, 115 Bway., City.", and it was the intention of the said defendant then and there that the said letter should be sent and delivered by the post-office establishment of the United States to the said James W. Osborne at 115 Broadway, in the city of New York and within the jurisdiction of this court; against the peace and dignity of the United States and contrary to the form of statute of the United States in such case made and provided.

Wherefore, deponent prays that the aforementioned defendant, Rae Tanzer, may be arrested and imprisoned or bailed, as the case may be.

JAMES W. OSBORNE.

Sworn to before me this 19th day of March, 1915.

C. S. HOUGHTON,

U. S. Comm. S. D. of N. Y.

Mr. WILLIAMS. Mr. Mayhew was the inspector, was he not?

Mr. SLADE. Yes, Mayhew was the inspector.

Mr. CARLIN. The committee asked for these specific charges, but also asked for the names of the witnesses by whom they could be substantiated.

Mr. SLADE. I will submit that before I leave here.

Mr. CARLIN. We asked that for all of them.

Mr. SLADE. I did not so understand, but I can make it out here, and attach it to the memorandum before I leave.

Mr. CARLIN. All right.

Mr. SLADE. Also the letter of Rae Tanzer, written to Mr. Osborne, which was read by my brother in his statement here, and the affidavit of Mr. Osborne, upon which Rae Tanzer was arrested. The committee desired some names of the attorneys who were interested in the tobacco cases. I know nothing at all about the tobacco cases, but I have obtained on behalf of the committee some of the names which I am submitting here. The committee does not desire to have me read all these names into the record?

The CHAIRMAN. It is not necessary now.

Mr. CARLIN. Let us have the names.

Mr. BUCHANAN. Read the names.

Mr. SLADE. Mr. Felix Levy and L. D. Brandeis. Those two gentlemen appeared for the National Cigar Leaf & Tobacco Association, the Cigar Manufacturers' Association of America, the Independent Tobacco Salesmen's Association, the Leaf Tobacco Board of Trade of New York; John W. Yerkes, of Washington, D. C., appeared for the Independent Tobacco Manufacturers' Association of the United States; Henry H. Hunter appeared for the Independent Retail Tobacconists; Charles Dushkind instituted several suits in the United

States District Court for the Southern District of New York against various tobacco dealers for conspiracy arising out of these cases.

The CHAIRMAN. What is expected to be proven by each one of these witnesses?

Mr. SLADE. I know nothing at all about these cases.

The CHAIRMAN. These are just counsel that appeared in the case?

Mr. SLADE. Yes; but I know nothing about the charges or the nature of the cases.

Mr. CARLIN. The committee requested that you give us the names of witnesses who could substantiate the charges in the case of the Metropolitan Tobacco Co., which was charged to be in collusion with Snowden Marshall.

Mr. SLADE. I understood the committee wanted the names of the attorneys.

Mr. CARLIN. Oh, no; we can get those from the record. We want the names of the witnesses who will be able to establish that fact, if it exists.

Mr. SLADE. I know nothing at all about those charges, but I can obtain the witnesses, if it is necessary.

Mr. CARLIN. You know nothing, as I understand you, of those charges, and have no witnesses who could substantiate them?

Mr. SLADE. Not I.

Mr. HILL. That question was raised here by Mr. Buchanan some time the other day, and, of course, all I know about it is the information that has been submitted to me, and those names are the names of the complainants. They may, some of them, be corporations; I take it that they are—that some of the tobacco associations are really corporations. Of course, the people connected with the company are the ones who would make the complaint and give the testimony. I think, by calling upon these people direct, you would get the people who made the complaint, and get the evidence you are asking for.

Mr. BUCHANAN. If the committee please, Mr. Chairman, I would suggest that the committee let Mr. Slade continue his statement, so it will be continuous, and then take up the tobacco cases later.

Mr. CARLIN. The reason I asked Mr. Slade the question is because his brother said he could get from the firm of Stroock & Stroock the names of the witnesses who could establish the facts which he alleged, and I noticed that he only had the names of counsel in the case.

Mr. SLADE. He is getting in communication with Messrs, Stroock & Stroock, and if we get them, we will submit them to the committee.

The CHAIRMAN. This complaint against the Hon. H. Snowden Marshall, United States district attorney for the southern district of New York—who was it that signed it? It is not signed by anybody.

Mr. SLADE. I did not think the committee wanted it signed, but I can and will sign it and swear to it.

The CHAIRMAN. I do not care whether you swear to it.

Mr. SLADE. It is made in my name.

The CHAIRMAN. In your name?

Mr. SLADE. I believe so—David H. Slade. I will sign it.

The CHAIRMAN. It says: "A member of the firm of Slade & Slade."

Mr. SLADE. Well, it is David H. Slade.

The CHAIRMAN. You will sign it before you leave, will you?

Mr. SLADE. Yes. I would not make any statement, unless I could swear to it and substantiate it. My brother also referred to a newspaper which was published in Denver, Colo., and which was circulated throughout the country, I understand, charging Mr. Marshall with various offenses. For the benefit of the committee, I brought a copy of the paper, and part of it reads as follows:

The CHAIRMAN. What is the name of the paper, and its date?

Mr. SLADE. The Truth.

Mr. BUCHANAN. First Shot.

Mr. SLADE. First Shot. Headlines.

Mr. NELSON. Give the date.

Mr. SLADE. I suppose the date is lower down here. It does not seem to have any date.

The CHAIRMAN. It is not dated?

Mr. SLADE. I believe so.

The CHAIRMAN. Where is it published?

Mr. SLADE. Denver, Colo.

The CHAIRMAN. Who is the editor?

Mr. SLADE. Published by J. Hugh Bauerlein, Denver, Colo., and the headlines are as follows: "United States Officials Co-Conspirators in a Fraudulent Transaction," in large headlines. "Evading official duty. It causes one to think when a dangerous man like the Honorable H. Snowden Marshall is appointed as United States district attorney of New York, who wilfully and deliberately tries to distort sworn evidence with documentary proof attached, in the interest of self-confessed thieves. Mr. Marshall has not even got the moral courage to address, much less sign his name to, misleading, evasive, and contradictory official letters for fear of compromising himself." In a letter addressed to Mr. H. Snowden Marshall, which was dated September 30, 1914, which will be found in this paper, known as "The Truth," he charges him: "All I ask of you is to enforce the law against these self-confessed thieves, or not," and in which he charges Mr. Marshall with deliberately refusing to prosecute offenses in violation of the United States laws, and that he has evidence to that effect.

Mr. NELSON. Does he give any details there?

Mr. SLADE. He gives the entire correspondence.

Mr. BUCHANAN. I will say for the benefit of the committee that I have not only that paper, but several communications, and I am waiting and expecting to have it in affidavit form some time this week.

The CHAIRMAN. Who is the editor of that paper?

Mr. BUCHANAN. J. Hugh Bauerlein. He is a business man of Denver, Colo.

Mr. SLADE. It is in reference, I believe, to that wireless case.

Mr. NELSON. Is this a trade paper?

Mr. SLADE. No. It is a paper he had published. I do not know the gentleman. I never met him.

The CHAIRMAN. Was that paper sent through the mail?

Mr. SLADE. Sent through the mail.

The CHAIRMAN. Do you know when it was received in New York?

Mr. SLADE. I believe we received it some time during the latter part of March.

Mr. BUCHANAN. I received all of that through the mails.

Mr. NELSON. Have you read those letters?

Mr. BUCHANAN. Yes; I have read them all, and can bring them down to you now if you want them. I expect to have them in affidavit form.

The CHAIRMAN. The latter part of March, 1915, you received this paper through the mail?

Mr. SLADE. Yes.

Mr. CARLIN. What were the offenses he claimed were not prosecuted?

Mr. SLADE. I have not given the matter much attention. It seems Mr. Marshall had knowledge of certain frauds connected with the wireless, and he had refused to prosecute them, and he published that, and he had written Mr. Marshall directly some letters making certain accusations against him, and those letters have gone through the mail, and Mr. Marshall has never taken any steps against him or anybody else concerned on the accusations he makes.

The CHAIRMAN. Was Bauerlein interested in the wireless company?

Mr. SLADE. I know nothing at all about the gentleman, except I got that through the mail.

Mr. STEELE. The newspaper says he is a dealer in stocks and bonds.

Mr. BUCHANAN. He is what they call a "broker," I think. I just telephoned my secretary to bring down all the papers I have.

Mr. CARLIN. You mean the editor of that paper is a broker?

Mr. BUCHANAN. Bauerlein.

Mr. CARLIN. I thought he meant that Marshall was a broker?

Mr. SLADE. No.

Mr. BUCHANAN. He was referring to the gentleman who publishes this paper. If the committee wants what I have on that I will put it before them now. I expect to have it in affidavit form some time this week.

The CHAIRMAN. Use your own pleasure about that, Mr. Buchanan. Put it in whenever you feel like it.

Mr. BUCHANAN. I have had that for some time.

Mr. SLADE. I found that my brother had gone pretty thoroughly over the situation, and, as suggested by the committee, I ought not to go over the same ground. There was very little that my brother left out. In the case of Stafford the United States Circuit Court of Appeals reduced his bond, after conviction, to \$7,500. The original bond, before the conviction, was placed by Houghton at \$12,000. We had made arrangements with a bonding company on Saturday afternoon to have Safford liberated from the Tombs, where he was confined for about 14 weeks. Arrangements were made with the marshal to go and get Mr. Safford, and the marshal did go there and on the way back came into the Federal court building. We then met Mr. Houghton, and we said to him, "We want you to approve this bond," which was a reliable surety company which has been accepted from time to time in the Federal court building. Mr. Houghton told us to wait about 10 minutes; that he was going across the street to have his lunch, and instead of coming back he took a train and went to Red Bank, N. J. This was on Saturday afternoon, at this time. We waited from 12 o'clock until 5 in the afternoon, and Mr. Houghton never returned.

Mr. MOSS. Who was Mr. Houghton?

Mr. SLADE. United States commissioner.

Mr. NELSON. At what hour on Saturday did you meet him?

Mr. SLADE. From 12 to 5.

Mr. NELSON. You met him at 12 o'clock?

Mr. SLADE. Yes; and waited for him until 5 o'clock. We got Mr. Houghton on the telephone at his house, at Red Bank, N. J., and over the telephone Mr. Houghton informed us that Mr. Roger P. Wood, the chief assistant of Mr. Marshall, had instructed him not to approve of any kind of bond; that Safford must stay in jail Saturday and Sunday. We told Mr. Houghton then that he was not to receive instructions from any assistants or anybody else; that this man was entitled to be liberated; that the United States Circuit Court of Appeals had passed an order that he should be released on \$7,500 bond, and that we had produced a reliable surety company. At that time many of our men-of-war were in New York, in the Hudson River, and our judges were there. We then attempted to get into communication, by wire, with some of the judges, but we were not successful. We finally got Mr. Houghton again on the telephone, and we informed him that unless he came down and performed his duty we would bring him before the court on Monday morning. Mr. Houghton then said he would come down on one condition—if we paid him his expenses. He then came from Red Bank, N. J., and about 10 minutes past 9 he approved of the bond, and I paid Mr. Houghton \$9. The fare from Red Bank, N. J., to New York is about 80 cents; a taxicab is about \$1. He said his expenses were \$9, and I was glad to pay him \$9. Now, he had received specific instructions from Roger P. Wood, the chief assistant to Mr. Marshall, not to approve of any bond, because he wanted Safford to lay in jail Saturday and Sunday.

The CHAIRMAN. Who told you that?

Mr. SLADE. Mr. Houghton himself.

The CHAIRMAN. He told you that?

Mr. SLADE. Yes.

Mr. CARLIN. How old a man is Mr. Wood?

Mr. SLADE. About 35. I would like to have the committee look at him. That is, I would like to have the committee see him, and I think they would form the same opinion of him that Martin W. Littleton formed of him, a former Congressman of this House.

Mr. NEELY. Have you any evidence that he was getting any instructions from Mr. Marshall in this particular case?

Mr. SLADE. I assume that the principle of an employee and his superior would apply. He is his chief assistant, and he delegates to him all his authority, and he is bound by his acts. Knowledge to the agent, I assume, would be knowledge to the principal. This is not the first case in which Mr. Wood has misconducted himself.

Mr. NELSON. Did you bring this matter to the attention of Mr. Marshall himself?

Mr. SLADE. Mr. Marshall would not see anybody; he referred you to Mr. Wood.

Mr. NELSON. You did not answer my question. Did you take it up with him personally?

Mr. SLADE. I did not.

Mr. NELSON. Then you simply inferred that?

Mr. SLADE. I inferred that from the entire attitude of Mr. Marshall in this case. I inferred it from the attitude of his assistants in this case.

Mr. NELSON. Had you at any time previously appealed to Mr. Marshall about having been rebuffed or turned down by his assistants?

Mr. SLADE. In one matter. My brother was assaulted by Roger P. Wood, and Mr. Marshall was appointed to investigate the assault—his own superior—and we got very little satisfaction.

Mr. NELSON. How do you directly connect Mr. Marshall with the acts of his subordinates?

Mr. SLADE. I connect him by the fact that it is presumed that his subordinates would report to him.

Mr. NELSON. That is presumed?

Mr. SLADE. Yes; and his entire participation in this case, also in reference to the composite photograph.

The CHAIRMAN. Who appoints these assistant United States attorneys up there?

Mr. SLADE. He does.

The CHAIRMAN. Mr. Marshall?

Mr. SLADE. Yes.

The CHAIRMAN. Is that the case all over the United States?

Mr. SLADE. I do not know. I know it is, however, there.

The CHAIRMAN. I thought the Attorney General appointed these assistants.

Mr. SLADE. No; all of these assistants came from Mr. Marshall's private office—former clerks. My brother failed to call to the committee's attention that two mysterious trunks were discovered in a woman's house, named Denham, on the 19th day of March. Now, all these mysteries occurred on one day. Mr. Swayne, the post-office inspector, testified that he worked under the personal instructions of Mr. Marshall in this case. A reporter on the New York American, named John Finnegan, went down to see Mrs. Denham, and Mrs. Denham told Mr. Finnegan, the reporter of the New York American, that those trunks were planted there by Mr. Swayne, the post-office inspector, and an article appeared the following day in the New York American to that effect.

The CHAIRMAN. Did that have anything to do with this Slade case?

Mr. SLADE. Yes.

Mr. NELSON. How? Show us the bearing it has on this impeachment of Mr. Marshall.

Mr. SLADE. I am getting now to the fact of how it bears on it. When he published that article in the newspaper Mr. James W. Osborne's nephew met him in the hall and told him if he did not desist he would be indicted.

The CHAIRMAN. That who would be indicted?

Mr. SLADE. John Finnegan.

Mr. WHALEY. What is the name of the nephew?

Mr. SLADE. James Osborne, jr. At that time, James Osborne, jr., was one of the assistants under Mr. Marshall, as well as James W. Osborne's special assistant; they are connected in the office. Now, the Tanzer sisters, after they testified on behalf of Mr. Safford, were again indicted, and indicted for perjury, and you will find that every person who had anything to do with the Tanzer case, either as counsel, investigators, witnesses—they were all indicted for some crime. Now, in the case of the United States v. Kugel, I want to have a word to say about that.

Mr. CARLIN. Mr. Nelson asked you to explain what relation those trunks had to this case.

Mr. SLADE. Why, on the 19th day of March there was a mythical Oliver Osborne discovered, who was supposed to have gone down to see Mr. Osborne, and he said to Mr. Osborne, as Mr. Osborne claims: "We know you are an honest man; you are not the man; I am the man. I went out with that girl," and after that statement was made Mr. Osborne let him get away. That very afternoon, two trunks were discovered, supposed to belong to this mythical Oliver Osborne, and the trunks were not examined by Mr. Swayne until 11 o'clock at nighttime. Now, then, when Mr. Finnegan heard of these trunks being discovered, he went down and interviewed the woman in whose house the trunks were found, and she made to him the statement that the trunks were planted there by Mr. Swayne.

Mr. NELSON. In other words, that Mr. Swayne was in the conspiracy to plant the trunks there, to make this fiction appear real?

Mr. SLADE. There is no doubt in my mind about it. I would like you to see the conglomeration of Osbornes there that were described. They described him as a man weighing 195 pounds, and 5 feet 10 inches tall, and they found collars size 13 and 14 there. He must have been a rubber man. And they found shoes unmated.

Mr. NELSON. How do you know these things?

Mr. SLADE. They were in court as exhibits. After everybody went out and had gone, Mrs. James W. Osborne, herself, went and examined that trunk—after everybody had gone from the court room. Now, in the case of the United States v. Kugel, Mr. Frank Moss, formerly an assistant district attorney under Mr. Whitman, wrote a letter of protest to Mr. Marshall directly, and complained that while his client was being tried, his client's witnesses were, on the very same day, subpoenaed before the grand jury downstairs to ascertain beforehand as to what they would testify on behalf of his client. He also protested to Mr. Marshall as to signals between Mr. Roger P. Wood and the Government's witnesses on the witness stand—not only he, but a juror who was sitting in that case complained about it; that there was a signal code between the assistant district attorney and the witness. Now, that was called to Mr. Marshall's attention by Mr. Frank Moss, in a letter of protest, and that man is still his chief assistant.

The CHAIRMAN. I suppose they denied that there was any secret signal code?

Mr. SLADE. I beg your pardon?

The CHAIRMAN. I suppose they denied any such thing was true?

Mr. SLADE. Oh, yes; they certainly denied it; but when a juror notices it, and counsel noticed it, and people present noticed it, it is pretty near time to believe somebody.

The CHAIRMAN. How do you know a juror noticed it?

Mr. SLADE. The juror made that statement. We have his name, and we will submit it to you.

Mr. STEELE. Was the attention of the court called to that at that time?

Mr. SLADE. Protest made in open court.

Mr. STEELE. Before whom?

Mr. SLADE. Judge Grubb, I think—yes.

Mr. WILLIAMS. Did the juror make any protest, during the proceedings, to the court?

Mr. SLADE. I am not quite certain. I do know he protested, but I will not be certain whether he spoke to the court.

Mr. WHALEY. What is the name of that juror?

Mr. SLADE. Pierre M. Clear, 51 East Forty-second Street, New York City.

The CHAIRMAN. Was that called to the attention of the judge, you say?

Mr. SLADE. Yes.

The CHAIRMAN. What did he say about it?

Mr. SLADE. Nothing.

The CHAIRMAN. Why did he not do anything about it?

Mr. SLADE. I am unable to answer that question.

The CHAIRMAN. Were you not present?

Mr. SLADE. Yes.

The CHAIRMAN. What did he do? What was said and done?

Mr. SLADE. Nothing.

Mr. WHALEY. Did the judge make any reply?

Mr. SLADE. No; I do not believe he did.

The CHAIRMAN. Who called the judge's attention to it?

Mr. SLADE. Mr. Frank Moss.

The CHAIRMAN. Was he in that case?

Mr. SLADE. Chief counsel in that case.

The CHAIRMAN. With you and your brothers?

Mr. SLADE. Associated with us. Before Osborne went to Marshall and made his complaint he went to see Charles Perkins, district attorney, and attempted there to have Rae Tanzer arrested for blackmail. Charles Perkins turned him down and said he did not have any case; that he should try his case out in the State courts first, and it was after that that he went to see Mr. Marshall.

Mr. DANFORTH. What proof have you of that?

Mr. SLADE. Mr. Perkins told it to my brother directly. Now, in submitting these matters to the grand jury, Mr. Marshall subpoenaed Mr. John J. Hanan, an investigator for us. Mr. Hanan had submitted to us reports from day to day, and when he was subpoenaed they served him with a subpoena duces tecum to produce his reports. In those Mr. Marshall found that we were informed that when Mr. Hanan's investigator went to Plainfield, N. J., to investigate this matter, that Mr. Kitchen, proprietor of the hotel, informed the investigator that Mr. James W. Osborne was the man that came to that hotel and registered as "Oliver Osborne." Now, that was contained in that report. Mr. Marshall did not submit that report to the grand jury. He withheld it, and when it came up for trial we gave him a notice to produce, and he refused to produce it, although it was in his possession.

Mr. VOLSTEAD. That would not be evidence, would it?

Mr. SLADE. It would be evidence that the investigator had reported things to us as he found them in the report. It is important on the bad faith of Marshall.

Mr. VOLSTEAD. Was that on your trial?

Mr. SLADE. Yes. You will find we instituted suit on the 16th day of March. Within a day or two thereafter, before Mr. Marshall had anything before him as district attorney, he came out with a

bold statement, "Attorneys and others in a conspiracy to blackmail James W. Osborne," and from that time on until the indictments were procured there were statements in the newspapers every day coming from Mr. Marshall and his assistants.

Mr. NELSON. Did he sign them, or how do you know they came from him?

Mr. SLADE. Quoting him—quotations from Marshall.

The CHAIRMAN. Quoting him; that is, Marshall?

Mr. SLADE. Quoting him; also Roger P. Wood and Hirschenstein.

Mr. MOSS. Were you making any statements at that time?

Mr. SLADE. No. My mouth was sealed from the time the grand jury began to investigate. I never made any statement to newspaper men from that time. In fact, I refused to make any statement of any kind until Mr. Osborne attacked me. I will supply you with the names of reporters who came to me, and I said to them: "I do not desire to give this case any more publicity than is necessary." I said: "If Mr. Osborne makes any statement derogatory to the girl's case, I will answer it." And it was Mr. Osborne who attacked my brother and I, and said we were instigated to bring these actions by the directors of the New York, New Haven & Hartford Railroad, and I do not know a man on that railroad.

Mr. MOSS. Prior to these statements, which you say emanated from Mr. Marshall, had you been engaged in issuing statements reflecting on Mr. Marshall in anyway?

Mr. SLADE. None at all.

Mr. DANFORTH. How do you know Mr. Osborne is not responsible for sending out these statements?

Mr. SLADE. Because the reporters came over to us and said they had just been to Mr. Marshall. It has been the common practice in the New York district that every case which assumes a character of importance is first tried out in the newspapers by Mr. Marshall and his assistants.

Mr. DANFORTH. You never knew a reporter to misstate where he came from?

Mr. SLADE. I will agree with you that lots of times they do, but when from day to day statements are written as a quotation Mr. Marshall could have refuted them, but at the same he never did.

Mr. NELSON. They were published in the newspapers and ascribed to him?

Mr. SLADE. Yes.

Mr. NELSON. Did he ever say they were not authentic?

Mr. SLADE. No, never. Every day he would say, "We have three or four more witnesses, and they will prove this and that," or "The Slades did so and so." You will find that every day in the newspapers.

The CHAIRMAN. Have you some of those newspaper articles here?

Mr. SLADE. Yes; I have every newspaper article compiled in the office and will be glad to send them to the committee.

The CHAIRMAN. I think we should have them.

Mr. SLADE. Yes; I will send them to the committee. Now, my brother called the attention of the committee to the composite photograph. Now, that photograph was made at the suggestion of Mr. Marshall, Mr. Osborne, and Mr. Wood. Mr. Baker was called in and they asked him to assist, but he said the scheme would be ridicu-

lous; that the Slades would not fall for it. That was before the indictment was filed.

Mr. NELSON. He said the Slades would not fall for it? How can you prove that?

Mr. SLADE. By Mr. Le Gendre, who was present, the photographer who made the picture.

Mr. STEELE. Was he indicted?

Mr. SLADE. He was not. He was the one who Marshall asked to manufacture this photograph, and they charge us with arranging for a false and misleading photograph of James W. Osborne and Rae Tanzer, and when Mr. Marshall filed that indictment he knew that that photograph was manufactured at his solicitation.

The CHAIRMAN. Were you tried on that indictment?

Mr. SLADE. Yes; on both of them, and I only hope Mr. Marshall would have the courage to put me on again for trial.

The CHAIRMAN. Did that all come out in the trial that you brought out to-day?

Mr. SLADE. They just got to that point when Judge Russell was taken ill. I wish we had continued. We pleaded with Mr. Marshall to sign any solemn waiver, and that if any conviction should result we would not plead the substitution of a judge.

The CHAIRMAN. Did you do that in open court?

Mr. SLADE. Yes; through Martin W. Littleton we urged him. We told Mr. Littleton to go and make any solemn obligation or agreement he desired and we would stick to it and not raise any question on the substitution.

Mr. NELSON. Was Mr. Littleton an attorney in the case?

Mr. SLADE. Yes.

Mr. NELSON. Your attorney?

Mr. SLADE. Yes.

Mr. MOSS. Was that felony case?

Mr. SLADE. Yes.

Mr. MOSS. Under the law of New York, could that be done by waiving in that way?

Mr. SLADE. No. Subsequent to that a decision came down, but we could have waived; we could have waived that, yes.

Mr. MOSS. Can you waive it under the law?

Mr. SLADE. Yes, I can waive that, and if I could not waive, it never would have appeared in the record, because I give you my solemn oath as a man, I never would have raised it.

Mr. NELSON. In the trial of the case were they stalling, or did they speed the case?

Mr. SLADE. Stalling. For eight days they offered evidence, not to show that my brother was guilty, but extolling the virtues of Mr. Osborne. The newspapers came out with it, extolling the virtues of Mr. Osborne, but nothing about the case.

Mr. NELSON. And you were on trial?

Mr. SLADE. Yes.

The CHAIRMAN. Did you object to the admissibility of that evidence?

Mr. SLADE. We objected to nothing, so far as our case was concerned, because we wanted the door wide open; I knew I was not guilty of any offense.

The CHAIRMAN. Had Mr. Osborne testified?

Mr. SLADE. Yes.

The CHAIRMAN. And they spent eight days doing nothing but extolling the virtues of Mr. Osborne?

Mr. SLADE. Just read that record.

The CHAIRMAN. I do not care to read the record. I am asking you.

Mr. SLADE. They offered alibis of all kinds; they offered no evidence, except that I whispered in my client's ear once and I gave \$10 to Safford.

The CHAIRMAN. It seems to me Judge Russell would have stopped the trial before eight days.

Mr. SLADE. Judge Russell was a stranger to the situation. The case received so much notoriety that probably the judge wanted to have the trial wide open; let everybody have a square deal and a fair chance. We made no objections to it. I realize how serious these charges are, and I would not make the charges unless I felt I could substantiate every charge I make.

Mr. IGOE. I want to ask you about this method of calling witnesses before the grand jury on the day on which the defendant is called for trial. How many cases do you know of where that practice has been followed?

Mr. SLADE. In the case of the United States *v.* Kugel one witness was called 32 times before the grand jury on the very same subject.

Mr. IGOE. I am speaking now of calling witnesses on the day of the trial of the defendant.

Mr. SLADE. In the Kugel case they did it twice. He was tried twice.

Mr. IGOE. The grand jury was in session at that time?

Mr. SLADE. No; nothing before the grand jury at that time. The man was on trial, having been indicted. While he was being tried upstairs, they subpoenaed his witnesses downstairs.

Mr. IGOE. Now, is there any other case of that kind?

Mr. SLADE. That is the only case that came to my personal attention.

Mr. MOSS. Your brother stated that they also subpoenaed the counsel.

Mr. SLADE. Yes; they subpoenaed my brother, Benjamin Slade.

Mr. MOSS. Did counsel object to testifying?

Mr. SLADE. Yes; he said, "I object to this."

Mr. MOSS. He refused, and they did not compel him?

Mr. SLADE. No; certainly not. They knew he was right, and he was an attorney, but a layman does not know. A layman gets a subpoena and they subpoena him before the grand jury, and they do not take him into the grand jury, but into the counsel chambers.

Mr. IGOE. Was that done in any other case that you know of, or that you have heard of?

Mr. SLADE. Yes, it was done in the Oppenheimer case.

Mr. IGOE. Was the firm of Slade & Slade the attorneys in that case?

Mr. SLADE. No; we simply came in afterwards, and we had six indictments quashed in that case, I believe.

Mr. IGOE. Was it done in your case when you and your brother were on trial for conspiracy?

Mr. SLADE. It was not done in our case, no. Now, we will get back to the Kugel case again. A fellow named Goodman, who was supposed to have moved certain goods, which was a charge of concealing assets from the trustee in a bankruptcy case, as I say, he was taken before the grand jury from 30 to 32 times—and he will testify to that fact—until one of the grand jurors came to his assistance, and said, "Why are you persecuting that boy?" He was made to sit down and write for two hours on a subject that probably they had questioned him on 28 or 29 times before.

Mr. NELSON. What was he supposed to testify to? What was pending?

Mr. SLADE. Well, there was a conspiracy charge, in which Mr. Kugel was charged with conspiring with two bankrupts to conceal the assets from the trustees. Now, he was supposed to be the expressman who moved the merchandise.

Mr. DANFORTH. This young man?

Mr. SLADE. Yes.

Mr. NELSON. Why was the district attorney interested in his testimony? How does that bear upon the conspiracy and the denial of justice?

Mr. SLADE. They wanted to have him say that Mr. Kugel was the one who directed him to move the goods, because Mr. Kugel was charged as a coconspirator.

Mr. NELSON. What would the district attorney gain by that?

Mr. SLADE. The conviction of Kugel.

Mr. NELSON. Why was he trying to convict Kugel?

Mr. SLADE. He was a lawyer.

Mr. NELSON. Because he appeared in the Slade case?

Mr. SLADE. No; because he practiced a good deal there and appeared for these bankrupts.

Mr. NELSON. And that was an effort to drive him out of that practice?

Mr. SLADE. There is no question of it, in my mind.

Mr. NELSON. So as to monopolize the practice?

Mr. SLADE. I will not say for what purpose. When you get a United States judge sitting on the bench and he says, "If I were sitting here as juror and were asked to believe the Government's main witnesses, I would not believe them under oath," and the jury stood 11 to 1, and Mr. Marshall puts them on trial again, you can judge for yourself.

Mr. WHALEY. Why did not the judge dismiss the case if he did not believe the witnesses?

Mr. SLADE. He could not. There was a sufficient question of fact raised; but he has a right, under the Federal practice, to express his opinion of the testimony.

Mr. WHALEY. Has he not also the right to take the case away from the jury?

Mr. SLADE. Not if he believes the statements of some of the witnesses.

Mr. WHALEY. I understood you to say the judge said he would not believe the Government witnesses.

Mr. SLADE. It is a matter of record.

Mr. WHALEY. If he did not believe the Government's witnesses, why did he not take the case away from the jury?

Mr. SLADE. I can not answer that.

Mr. WHALEY. Was any request to do that made of him?

Mr. SLADE. No.

Mr. WHALEY. He was not asked to direct a verdict?

Mr. SLADE. No.

Mr. STEELE. Who was the judge?

Mr. SLADE. Judge Learned Hand, one of the most able judges we have in that district. At that time my brother wrote a letter, on November 12, 1914, to Mr. Marshall, calling to his attention—

Mr. CARLIN (interposing). Which brother?

Mr. SLADE. Benjamin Slade, my oldest brother, calling to Mr. Marshall's attention that in that case one of his assistants destroyed documentary proof which showed that the young man was not guilty of the offense charged, and after that letter he was put on trial again.

The CHAIRMAN. You are still talking of the Kugel case?

Mr. SLADE. Yes; and the jury, the second time, I believe, stood 10 to 2.

The CHAIRMAN. How did you find out the jury stood 10 to 2?

Mr. SLADE. After they were out we saw them; after they were dismissed and discharged.

The CHAIRMAN. You went and asked the jurors?

Mr. SLADE. I certainly did.

Mr. GARD. Do you think that is very good practice?

Mr. SLADE. Oh, yes; they do it right along in New York after the jury is discharged. In dismissing the indictment, Mr. Wood went into the court room, after two trials, and showed his venom by saying: "I move to dismiss the indictment, although I know the defendant is guilty." Now, in the case of the United States v. Herman H. Oppenheimer, Harry Seigel, of 102 Hart Street, Brooklyn, Joseph Nemeroff, Broadway Theater Building, will testify as to how they were brow-beaten before the grand jury when they were witnesses and insulted and called liars by Mr. Marshall's assistants when they were examining them before the grand jury; took them in 20 or 30 times before the grand jury on the same subject.

Mr. GARD. What sort of a case was that?

Mr. SLADE. An indictment for conspiracy.

Mr. GARD. Conspiracy for what?

Mr. SLADE. To conceal assets of a bankrupt. We only know two crimes in the Federal court—conspiracy and conspiracy. They do not know any other crimes up there. You will find probably 90 per cents of our indictments are conspiracies. Now, these two witnesses would make important witnesses to testify how they were insulted. Now, in the case of the United States v. Frank Safford, Frank Safford asked to appear before the grand jury and waived immunity, and when he appeared before the grand jury, because he did not testify as Mr. Marshall wanted him to, he said to him, Marshall did: "You are a damn liar. Go back to your dungeon." That is on record before the grand jury. I understand the only province of a district attorney is to present the evidence. He has no right to talk to witnesses in that manner.

The CHAIRMAN. Who told you this happened?

Mr. SLADE. That was testified to in open court by Mr. Safford.

Mr. NEELY. It is in this record?

Mr. SLADE. Yes; and Mr. Marshall does not deny it. None of these things were ever denied by Mr. Marshall. I wish he would have taken the witness stand and given us a chance to cross-examine him. The recent charge against me is that I changed the record. If I changed the record, I do not need any indictment; I need a physician to examine my head.

Mr. WHALEY. What indictment was that? What record?

Mr. SLADE. The Safford record, which appeared on the circuit court calendar for argument. The day before that they served me with a notice that they would ask the circuit court to send the record back because it was changed in three places, although there were some 600 corrections.

Mr. NELSON. There were some 600 amendments?

Mr. SLADE. Yes.

Mr. NELSON. Corrections?

Mr. SLADE. Yes.

Mr. NELSON. And you are supposed to have made these three?

Mr. SLADE. Yes.

Mr. WHALEY. Where were you supposed to have made them?

Mr. SLADE. In the testimony; objections and exceptions that I am supposed to have inserted. I tell you it is preposterous. It is only another way. They could not get us by a grand jury or by a petit jury, and now they are trying to get us this way.

The CHAIRMAN. You have appealed the Safford case, have you not?

Mr. SLADE. Yes.

The CHAIRMAN. And it is now pending in the circuit court of appeals?

Mr. SLADE. Yes; and I am as certain as I am that I am standing here that we will reverse them. I said to the circuit court of appeals in that case: "How ridiculous is the charge that I changed that, when we have 138 assignments of error, any one of which would be all we would need."

The CHAIRMAN. When do you expect to argue this case?

Mr. SLADE. After the 29th.

The CHAIRMAN. Of this month?

Mr. SLADE. Yes. I will place it on the calendar for the February term. I am anxious to argue it.

Mr. DANFORTH. What became of this motion?

Mr. SLADE. When it was submitted back, I went before Judge Learned Hand, and I said: "I am so anxious to argue this case, I will consent that these three amendments be stricken out and give me an opportunity to argue it. I have sufficient assignments of error, which would be sufficient to overrule the court below, and reverse it."

Mr. DANFORTH. And what did he say?

Mr. SLADE. Nothing. They submitted these charges and they sent them to Wallace McFarland as a referee to ascertain who made the changes.

Mr. DANFORTH. What did Judge Hand say about it?

Mr. SLADE. Nothing.

Mr. DANFORTH. Was it not referred to him?

Mr. SLADE. Yes; but I consented to the motion; that is, that the matters be stricken out.

Mr. DANFORTH. Then what did Judge Hand do?

Mr. SLADE. He said: "There are some charges here, and I believe it should be sent to some one to investigate."

Mr. NELSON. "Charges" or "changes?"

Mr. SLADE. Charges of changes, I mean.

Mr. DANFORTH. When was that done by Judge Hand?

Mr. SLADE. It was done, I think, around the 15th day—the early part of January.

Mr. DANFORTH. The 15th was last Saturday.

Mr. SLADE. I can not recall the date at this moment.

Mr. DANFORTH. Did you appear before the referee?

Mr. SLADE. I?

Mr. DANFORTH. Anybody?

Mr. SLADE. No, I did not. They served me with a notice to appear, but I was before this committee, and I had it adjourned for that purpose. There is another demonstration. Mr. Marshall makes charges there, but he does not name the person against whom the charges are made, so he subpoenas me in the hope that I will supply him with some evidence.

Mr. DANFORTH. But the charge is that you made those changes, is it not?

Mr. SLADE. No; it says the changes were made, but it does not say by whom.

Mr. CARLIN. You saw the record?

Mr. SLADE. Yes.

Mr. CARLIN. And you saw the changes made in the record?

Mr. SLADE. Yes.

Mr. CARLIN. Then the record was changed by these corrections?

Mr. SLADE. No. Just as sure as there is a God above us, and upon the spirit of my dead father, those changes were there when it was submitted to Judge Hough.

Mr. CARLIN. I say, but the changes were there? Your statement is that they were there before they were presented to the court?

Mr. SLADE. Just as sure as we are all here.

Mr. NELSON. How did you account for the changes?

Mr. SLADE. I will show you.

Mr. CARLIN. Were they such changes as would be favorable to you?

Mr. SLADE. No; they were exceptions actually taken. There was no change in the testimony; simply inserted objections and exceptions.

Mr. CARLIN. They were inserted in the record?

Mr. SLADE. Yes; not in the record after the judge signed it, but before he signed it. I served a complete copy of the record, with those changes, on the United States district attorney on the 14th of August.

Mr. CARLIN. There were changes in the record, though?

Mr. SLADE. Yes; changes all through the record; probably 600 changes?

Mr. VOLSTEAD. I suppose it was a bill of exceptions, and included some changes?

Mr. SLADE. Oh, yes; there were many changes.

Mr. CARLIN. The record, if left unchanged, would not show that an exception had been taken to that particular part of the testimony?

Mr. SLADE. That is it.

Mr. CARLIN. But the record as changed did show an exception had been taken?

Mr. SLADE. It was not changed.

Mr. CARLIN. You said it was changed.

Mr. NELSON. Was this a mere correction of the stenographer's minutes?

Mr. SLADE. Yes; but they claim we changed it after the judge had signed it.

Mr. CARLIN. I understood you to say there was a correction upon the face of the record?

Mr. SLADE. Yes.

Mr. CARLIN. And that correction showed that an exception had been taken; and without the correction the record would not have showed that an exception had been taken?

Mr. SLADE. That is it, but you do not get the difference between the record and the bill of exceptions.

Mr. CARLIN. Oh, yes, I know; the record is part of the bill of exceptions.

Mr. SLADE. No; the record, as printed and served on the United States district attorney, had already contained those changes, and he waived certification and signed a stipulation that the record was correct.

Mr. CARLIN. I understand. Your contention is that these corrections were in the bill of exceptions before they were presented to the judge for his signature?

Mr. SLADE. Yes.

Mr. CARLIN. But the fact is that the record was corrected, and the record showed an exception had been taken?

Mr. SLADE. Yes.

Mr. CARLIN. That an exception had been taken?

Mr. SLADE. Yes.

Mr. CARLIN. Without the correction the record would not have showed that particular exception?

Mr. SLADE. That is it; but in the previous testimony of the very same witness and every witness on the same subject, objections and exceptions are taken right along; that is, as to hearsay testimony, objections and exceptions were taken right along. As far as those charges are concerned, I think it is the greatest joke—I am not taking him seriously. I will not even claim my right as a witness, whether they are criminal or civil proceedings, and even if he tries to disbar me.

Mr. CARLIN. But it is a fact that this correction which was before the judge at the time was a correction which necessarily must have been made by your counsel, or by you, because it was in your favor and showed an exception had been taken in court?

Mr. SLADE. That is the presumption, yes.

Mr. CARLIN. That is the presumption?

Mr. SLADE. That is probably the presumption, but I took that record to Judge Hough and submitted that record to Judge Hough at Hanover, and it contained precisely that, because it is ridiculous to think I would go into the United States court and make a change on a bill of exceptions.

Mr. IGOE. Did you say you left a copy with the United States district attorney before you went to see the judge?

Mr. SLADE. I certainly did.

Mr. IGOE. And it shows those changes?

Mr. SLADE. I have not seen his copy. A copy of the record was served on the 14th day of August, and no complaint is made until they find the case on the calendar, ready for trial, and the night before that they served me with that notice of motion.

Mr. WILLIAMS. You say the judge referred that case to a referee to make an inquiry as to when those changes were made?

Mr. SLADE. Yes.

Mr. WILLIAMS. Has that referee reported?

Mr. SLADE. Not yet.

Mr. WILLIAMS. It is pending?

Mr. SLADE. Yes.

Mr. CARLIN. Judge Hough tried this Safford case?

Mr. SLADE. Yes.

Mr. CARLIN. Do you agree with your brother that he acted unfairly in the trial?

Mr. SLADE. I would be faithless to my oath if I said I do not. I want you gentlemen to read that record, and as long as I practice law I hope I may not have that same experience.

Mr. CARLIN. Is it your opinion that Judge Hough was in this conspiracy or collusion?

Mr. SLADE. I do not say he was.

Mr. CARLIN. Did he act as if he were?

Mr. SLADE. I do not charge him with collusion. I charge him with being unfriendly, and not holding the scales of justice evenly balanced. We said that in our brief. When a man is asked a question about a member of the New York Athletic Club, there is no use for a judge raising his gavel and saying boisterously, "Scandalous"; when a question is asked Mr. Osborne there is no necessity for the judge to say, "Mr. Wood, do you object?" And Wood says, "Yes"; and when Mr. Osborne is cornered again for the judge to say, "Mr. Wood, do you object?"; and then again, "Mr. Wood, do you consent to this line of examination?" If we are going to have the kind of justice we are entitled to, I do not think that is the way to get it.

Mr. WHALEY. Your idea is that Judge Hough ought to be impeached as well as Mr. Marshall?

Mr. SLADE. I will not say, but I do not hesitate to say that the scales of justice were not held evenly balanced.

Mr. WHALEY. Do you mind expressing your opinion openly?

Mr. SLADE. I think Judge Hough's conduct ought to be investigated.

The CHAIRMAN. When was Judge Hough appointed on the bench, do you know?

Mr. SLADE. I have not any idea.

The CHAIRMAN. How old a man is he?

Mr. SLADE. I should judge about 59 or 60.

Mr. STEELE. Was he appointed at the same time Judge Noyes was appointed?

Mr. SLADE. Oh, no.

The CHAIRMAN. Was he not appointed in 1906?

Mr. SLADE. I do not know.

The CHAIRMAN. I think the record shows it was June 27, 1906.

Mr. WILLIAMS. He was formerly known as "Recorder Hough," was he not?

Mr. SLADE. No; there was a Recorder Goff. You are perhaps thinking of him.

Mr. STEELE. This is Charles M. Hough, is it?

Mr. SLADE. Yes.

Mr. NELSON. He is a New York judge?

Mr. SLADE. Yes. Just take that record, gentlemen, and read it. He was not convicted; I do not call that a conviction.

The CHAIRMAN. How was Mr. Marshall's conduct on that trial?

Mr. SLADE. You mean Safford's?

The CHAIRMAN. Yes.

Mr. SLADE. Why, they created an atmosphere of suspicion; had all sorts of marshals and escorts with them. You would think everybody connected with Mr. Safford were guerillas, gunmen, cadets, as we call them there. You would think they were in there to blow up the courthouse, the atmosphere he created, having a bodyguard for himself and his assistants.

Mr. CARLIN. When was the Safford case tried?

Mr. SLADE. May.

Mr. CARLIN. 1915?

Mr. SLADE. Yes.

Mr. CARLIN. And you say it has not been argued before the circuit court of appeals?

Mr. SLADE. It was on the calendar, ready for argument, and the day before I was served with the motion.

Mr. CARLIN. I understood you to say you would be ready for argument to-day?

Mr. SLADE. Yes; I am ready to-day to argue it.

Mr. CARLIN. I am not asking that, but did you say the case would be called for argument to-day?

Mr. SLADE. No. I said I would have it placed on the day calendar for the February term and dispose of it.

Mr. NELSON. You would have argued it, had you not been here?

Mr. SLADE. I would have, only these things kept me away. I did not want to have it on the calendar from day to day, and get kept away.

The CHAIRMAN. It is now ready for argument?

Mr. SLADE. Yes.

Mr. DANFORTH. Has not the United States attorney control over that?

Mr. SLADE. He has over the trial calendar, but not in the circuit court of appeals.

Mr. DANFORTH. If you move to put it on the day calendar, he can not get it off?

Mr. SLADE. Unless he comes in and says, "I have not had time to prepare my brief or look the matter over thoroughly."

Mr. CARLIN. You will be through here to-day, Mr. Slade?

Mr. SLADE. Yes.

Mr. CARLIN. Then you can take that case up any day?

Mr. SLADE. No. We can not place it, except on a first Monday. Now, does the committee want a copy of the indictments—Slade indictments?

The CHAIRMAN. You might leave them with the committee; yes.

Mr. SLADE. There are indictments and superseding indictments. You will find that demonstrated on the face of the indictments.

The CHAIRMAN. Are those printed indictments?

Mr. SLADE. Ours?

The CHAIRMAN. Yes.

Mr. SLADE. Yes. If the committee wants a copy of the record on appeal in the Safford case, I will submit it. If the committee wants a copy of the record, with all the testimony, they will be able to see Judge Hough's conduct in that case—his rulings.

Mr. DANFORTH. There were three records left here by your brother the other day.

Mr. SLADE. Yes.

Mr. DANFORTH. There was one printed case.

Mr. SLADE. Well, that is the Safford case.

Mr. DANFORTH. In that do not these indictments appear?

Mr. SLADE. Not ours. Safford's indictment appears.

Mr. DANFORTH. These indictments are against you?

Mr. SLADE. Yes.

Mr. DANFORTH. I thought you aid "Safford."

Mr. SLADE. No; not these. Safford is charged with perjury. Every man who breathed in that case was charged with it, if he shook hands with Rae Tanzer, or with her counsel.

Mr. CARLIN. Have you been indicted for changing the record in that case?

Mr. SLADE. I have not.

Mr. CARLIN. Was any rule issued of contempt?

Mr. SLADE. No, sir.

Mr. CARLIN. No rule has been issued by the court for contempt?

Mr. SLADE. No.

Mr. CARLIN. The matter stands now that the court has referred the matter to a referee?

Mr. SLADE. Yes.

Mr. CARLIN. To ascertain what is the true record in the case?

Mr. SLADE. Yes. In that same connection, as I said, I have no fear of that at all. I want to tell this committee right now I have not any fear of any accusation they make against me. They have gone the limit, and they can not go any further, outside of charging me with blowing up some submarine.

Mr. WILLIAMS. Mr. Slade, your brother raised a point here that Mr. Mayhew, the inspector, committed perjury in this affidavit, because he said Mayhew knew nothing of the facts incorporated in his affidavit. Now, in reading this affidavit of Mayhew, I find that he says he was present at a hearing in room 227 of the courthouse, before the Hon. Clarence S. Houghton, United States commissioner, when Safford appeared and testified, and that in his (Mayhew's) presence he testified to a certain state of facts.

Mr. SLADE. Yes.

Mr. WILLIAMS. That Safford had testified to the fact that Rae Tanzer with the defendant Osborne did appear at this hotel and register and was assigned to room 15, so he purports all the way through the affidavit to set forth the testimony of Safford before this commissioner, of his own personal knowledge, based on the fact that he was present and heard him testify.

Mr. SLADE. That is right.

Mr. WILLIAMS. Then, the only place, if that is true, that he could be said to have testified on information and belief would be in his conclusion, where he states: "Whereas, in truth and in fact, said Frank D. Safford then and there well knew that James W. Osborne was not the man who accompanied Rae Tanzer to the hotel and registered there," etc. Now, on what did your brothers base their statement that Mayhew perjured himself in making that affidavit?

Mr. SLADE. All Mayhew knows is what Mr. Safford testified to in the court room.

Mr. WILLIAMS. That is all the affidavit says.

Mr. SLADE. He says it is perjury. How does he know it is perjury?

Mr. WILLIAMS. He does not testify to a single statement of fact here, except that which he claims to have come to his knowledge because he was present and heard Safford testify.

Mr. SLADE. Yes; but he says it is perjury.

Mr. WILLIAMS. Yes.

Mr. SLADE. And upon that he was arrested.

Mr. WILLIAMS. Yes; that is his conclusion.

Mr. SLADE. Now, he says he knew nothing about the true facts in the case. All he knew was about the testimony, but on being cross-examined he says "I did not know anything about the facts, whether they were true or false."

Mr. WILLIAMS. He heard Safford testify before the commissioner?

Mr. SLADE. Yes.

Mr. CARLIN. And heard the other witnesses testify at the time Safford testified?

Mr. SLADE. That is true.

Mr. WILLIAMS. Now, after stating what Safford testified to, he proceeds and says they are false, and that he should be prosecuted.

Mr. SLADE. That is before the grand jury.

Mr. HILL. If you read the affidavit as it stands, you will not find anything in it, alone; but if you read his testimony subsequently in the record you will find it.

Mr. SLADE. That is what I am calling Mr. Williams's attention to; and, in addition to that, he knew nothing—he says himself, in his testimony, "I knew nothing about whether the facts were true or false." He says: "I was told to make this affidavit by Mr. Wood, and I did it." Now, conceding that your question could be answered that it is not perjury; yet it is such unprofessional conduct on the part of Mr. Marshall's assistant that it should subject him to removal. If I ask you to make an affidavit upon facts that you know nothing about, the crime is brought to me. That has been our rule, and lawyers have been disbarred for the same thing time and time again.

Mr. WILLIAMS. On that point he states he was present and heard Safford testify before the commissioner. He purports to set forth in his affidavit what Safford testified to at that time, and then he puts in his final concluding clause, that Safford then and there knew that that testimony was false. Now, it is a fact that the hotel proprietor himself subsequently, or at some date, testified that it was not Osborne?

Mr. SLADE. No; he never did.

Mr. WILLIAMS. The hotel proprietor?

Mr. SLADE. No; not that man.

Mr. WILLIAMS. I do not mean Safford, but I mean the hotel proprietor?

Mr. SLADE. The hotel proprietor testified to what?

Mr. WILLIAMS. That this was not James W. Osborne who registered there.

Mr. SLADE. Oh, yes.

Mr. WILLIAMS. Now, this man Mayhew sets forth his statement of facts to which Safford testified, and he reaches the conclusion that the whole statement is false.

Mr. SLADE. And it was upon that conclusion that he was arrested.

Mr. WILLIAMS. And then he makes this affidavit as a United States inspector, charging him with perjury?

Mr. SLADE. Yes.

Mr. WILLIAMS. Wherein is Mayhew in fault in that affidavit?

Mr. SLADE. He is in fault in this fact; had he set out the facts as he knew them, and had personal knowledge that the facts as he heard testified to, were false——

Mr. WILLIAMS (interposing). Well, he does not say he had personal knowledge.

Mr. SLADE. But he concludes it, and upon that conclusion the warrant was issued.

Mr. WILLIAMS. Yes; based upon his investigation.

Mr. SLADE. There was not an investigation. Where was the investigation?

Mr. WILLIAMS. Among other things, the hotel proprietor himself, when he saw him, said Osborne was not the man.

Mr. SLADE. Conceding all that, yet he said in his testimony that he had no knowledge of the facts, except what Mr. Wood told him. Mr. Wood said, "You charge this man with testifying falsely." That is the whole sum and substance of it.

Mr. NELSON. He makes affidavit that these facts testified to are not true. It is a conclusion, under oath, is it not, without knowledge?

Mr. SLADE. Absolutely.

Mr. CARLIN. I want to ask you about the jury which tried the Safford case.

Mr. NELSON. This is a direct affidavit.

Mr. WILLIAMS. He makes affidavit as to what Safford testified to.

Mr. WHALEY. He says it is not true, but he does not say on what ground it is not true.

Mr. WILLIAMS. It is manifestly impossible for him to know, from a personal view point, whether it is true or not. He must base that upon the investigation of the case which he made.

Mr. WHALEY. Then how can he deny the statement?

Mr. CARLIN. I understood your brother to say that the judge brought with him to the criminal court a jury that he had been using in the civil court?

Mr. SLADE. That is right.

Mr. CARLIN. Do you mean that he brought just 12 jurors?

Mr. SLADE. Oh, no; he brought the entire panel.

Mr. CARLIN. He brought the entire panel?

Mr. SLADE. Yes.

Mr. CARLIN. That panel was, of course, subjected to the same rules of objection that any other panel would have been subjected to, by way of challenge?

Mr. SLADE. That is right.

Mr. CARLIN. How many men comprise a panel there in the civil court?

Mr. SLADE. I do not recall it; I could not tell you, but we had noticed there that the jury was sitting there all the month, and the usual custom has been there that when a civil jury is through trying civil cases they dismiss them and empanel a new jury for criminal cases.

Mr. CARLIN. Was the jury that tried Safford finally acceptable to the defendant?

Mr. SLADE. We had no alternative than to accept them. If a man answers that he is not biased, nor prejudiced, has no knowledge of the case or the parties, of course we have to accept him.

Mr. CARLIN. Then, the jury was accepted?

Mr. SLADE. Yes.

Mr. CARLIN. There was no juror who sat in the case who had been challenged by Safford?

Mr. SLADE. Oh, no.

Mr. IGEE. Did you try to have that panel dismissed?

Mr. SLADE. Oh, no. I want to say this much right now, in conclusion. I believe the committee will make no mistake, notwithstanding the fact that I am indicted—the committee will make no mistake in investigating the facts, and once the committee does, you will have men who will come here and volunteer, who are afraid to do so now.

Mr. WILLIAMS. Tell me a firm of reputable attorneys in the city of New York who are afraid to come here and do their duty?

Mr. SLADE. My brother is compiling a list of names of attorneys, which we will submit to the committee.

Mr. WILLIAMS. Of reputable firms?

Mr. SLADE. Yes; of reputable firms.

Mr. WILLIAMS. Who are afraid to come here and voluntarily testify?

Mr. SLADE. Yes; he is compiling a list of names at the request of the committee.

Mr. WHALEY. Do you know any firm there that will come here without compulsion?

Mr. SLADE. No; because they fear that man more than the devil fears holy water. That is his reputation there.

Mr. WHALEY. Do you mean to tell me that of all the lawyers in New York City there is not a reputable lawyer there who will come here and testify?

Mr. SLADE. I mean that we are the only courageous lawyers in New York City, Slade & Slade, who dare to attack Marshall, and I make that as strong as I can, and I tell you that if I thought I would be disbarred, and that condition would be cleared up, I would think I had done a good job—a good day's work.

Mr. NELSON. You have mentioned disbarment. Are there any such proceedings pending?

Mr. SLADE. No.

Mr. WHALEY. Is that feeling shared by all the lawyers in New York, that they are afraid to do anything in regard to Mr. Marshall?

Mr. SLADE. Yes.

Mr. WHALEY. Have you not a bar association there?

Mr. SLADE. Mr. Osborne is a member of it and Mr. Marshall is a member of it.

Mr. WHALEY. Are you a member of it?

Mr. SLADE. I am not. You have to wear a silk hat and be a society man.

Mr. WILLIAMS. What is the total membership of the bar association?

Mr. SLADE. I do not know.

Mr. WILLIAMS. It is very large, is it not?

Mr. SLADE. The bar association?

Mr. WILLIAMS. Yes.

Mr. SLADE. Oh, no; just select members.

Mr. CARLIN. What are the requirements for admission to the bar association?

Mr. SLADE. I do not know. I could not tell you, but I do know that you have got to wear a silk hat, and you have got to be in society—socially connected—before you can be a member there.

The CHAIRMAN. You never applied for a membership in the bar association?

Mr. SLADE. I did not want to get a blackeye. I knew what would be coming to me.

Mr. NELSON. As a matter of fact, can not any mere member of the bar, practicing there, become a member of the bar association?

Mr. SLADE. No; you can in Connecticut.

Mr. NELSON. That is true in my State. Is it a social institution as well as a legal association?

Mr. SLADE. Yes.

Mr. WHALEY. How many members are there in the New York Bar Association?

Mr. SLADE. I do not know.

Mr. DANFORTH. What is the other legal association?

Mr. SLADE. The New York County Lawyers' Association.

Mr. DANFORTH. You belong to that, do you?

Mr. SLADE. I certainly do, but if they present any charges there, they say "You had better go down to Forty-fourth Street."

Mr. DANFORTH. What is Forty-fourth Street?

Mr. SLADE. The New York Bar Association.

Mr. DANFORTH. The bar association of the city of New York is on Forty-fourth Street?

Mr. SLADE. Forty-fourth.

Mr. DANFORTH. It has been moved, then, since last December.

Mr. SLADE. It is right in back of that new store of Stern's.

Mr. VOLSTEAD. You say reputable lawyers are afraid of Mr. Marshall?

Mr. SLADE. Yes.

Mr. VOLSTEAD. In what way are they afraid of him?

Mr. SLADE. It is the general consensus of opinion there that since Mr. Marshall got into that office an ordinary attorney can not go there and try a case, unless you get somebody to try it for you.

Mr. VOLSTEAD. What are they afraid of? What does he do to them?

Mr. SLADE. Probably the same thing he did to me.

Mr. WHALEY. You say the bar association is exclusively a social organization?

Mr. SLADE. Yes.

Mr. WHALEY. And that a lawyer in good standing at the bar of New York can not become a member of it by filing an application and having his application indorsed by other reputable lawyers?

Mr. SLADE. You can not unless your social standing is good.

Mr. WHALEY. Unless you belong to the social crowd, or the aristocracy of the bar association?

Mr. SLADE. Aristocracy, yes.

Mr. WHALEY. But if you are a good lawyer, you can not become a member of the association simply because you have a good standing as a lawyer?

Mr. SLADE. You can not.

Mr. WHALEY. They differentiate between good lawyers and lawyers with a good social standing?

Mr. SLADE. Yes.

Mr. WHALEY. Can you name some of the officers of the New York Bar Association?

Mr. SLADE. I can not.

Mr. WHALEY. Can you get a list of them?

Mr. SLADE. Yes; I can get it.

Mr. WHALEY. Why did you not apply for membership?

Mr. SLADE. I knew I would have as much chance as a snowball—well, you know.

Mr. NELSON. How did you know that?

Mr. SLADE. Because I knew I would be considered not good enough socially. Martin Littleton is a member of it.

Mr. NELSON. He is?

Mr. SLADE. Yes.

Mr. CARLIN. You are a member of some of the other associations?

Mr. SLADE. Yes; the New York County Lawyers'.

Mr. CARLIN. And you say you did not apply to the New York Bar Association, or did you say you did apply and they told you to go to the other association?

Mr. SLADE. No; but the New York County Lawyers' Association is nothing more than a lawyers' library in which the lawyers can have access to it. When it comes down to a serious charge, they will send you down to the bar association.

Mr. CARLIN. Then, the association of which you are a member seems to have a high regard for this other association, by having its own members tried by the other association?

Mr. SLADE. Not its own members. You can belong to it if you pay \$10.

The CHAIRMAN. You do not have to belong to it——

Mr. SLADE (interposing). Nothing at all.

Mr. NELSON. It simply gives you admission to the library?

Mr. SLADE. Yes.

Mr. NELSON. It is a private association?

Mr. SLADE. It is an association which, when they give a judge a dinner, they charge you \$3 for coming there.

Mr. WHALEY. Does not the New York Bar Association try lawyers for malpractice, whether they are members of the association or not, and bring proceedings against them in the courts of New York, and have them disbarred?

Mr. SLADE. Very seldom.

Mr. WHALEY. Have they not done it?

Mr. SLADE. Yes, sir; they have done it.

Mr. WHALEY. Did they not do it with this fellow who tried this man Thaw?

Mr. SLADE. Yes.

Mr. WHALEY. Did they not bring charges against a lawyer who was for Thaw there?

Mr. SLADE. Delafield?

Mr. WHALEY. No; the other one, Hartridge?

Mr. SLADE. Yes.

Mr. WHALEY. Did they not bring charges against Hartridge?

Mr. SLADE. Yes.

Mr. WHALEY. Was he a member of the New York Bar Association?

Mr. SLADE. Yes.

Mr. WHALEY. And did they not disbar him?

Mr. SLADE. They had to, in that case, because otherwise they would be abusing their society. There it was in open court where they found he committed perjury.

Mr. WHALEY. No; they did not find he committed perjury; they said he rendered a false bill for getting perjured testimony.

Mr. SLADE. He swore to those bills.

Mr. WHALEY. And on that they tried him, and kicked him out of the association?

Mr. SLADE. Yes.

Mr. WHALEY. They had him disbarred from practice?

Mr. SLADE. Yes; there are such cases.

Mr. WHALEY. Does not that association bring proceedings against members of the bar who are not members of that association?

Mr. SLADE. Oh, yes.

Mr. WHALEY. For malpractice?

Mr. SLADE. Yes.

Mr. WHALEY. They could bring it against you, could they not?

Mr. SLADE. Oh, yes.

Mr. STEELE. They have a regular board of censors, have they not?

Mr. SLADE. Yes; and I invite Mr. Marshall to it.

Mr. WILLIAMS. Have they not a grievance committee?

Mr. SLADE. Yes; the grievance committee hears sort of prima facie cases, and then they submit it to the appellate division, and the appellate division appoints an official referee, and the official referee hears the evidence and reports to the appellate division. The appellate division of each department is the only power that has the right to disbar, censure, or reprimand an attorney.

Mr. DANFORTH. Are you a member of the New York State Bar Association?

Mr. SLADE. No.

Mr. WHALEY. Could you not have brought this proceeding against Mr. Marshall before the grievance committee of the bar association?

Mr. SLADE. I certainly could.

Mr. WHALEY. Have you done it?

Mr. SLADE. No.

Mr. WHALEY. Has anyone ever brought any charge against him before the grievance committee?

Mr. SLADE. No; they have not. The proceedings before that grievance committee are secret.

Mr. WHALEY. You could have gone before that committee?

Mr. SLADE. Yes; I could have.

Mr. WHALEY. And any lawyer in New York County could have gone?

Mr. SLADE. Oh, yes.

Mr. WHALEY. If all these lawyers are so afraid of Mr. Marshall and of his assistants, what would stop them from going before that grievance committee?

Mr. SLADE. Some of them may be of the same opinion I am—what assistance could they get there? Here in this whole record has the bar association taken any notice of the various inconsistencies of Mr. Osborne? I am certain that if I went down there they would entertain my complaint, but the Lord knows when they would have a hearing. They would probably have it when I was as old as Methuselah.

Mr. WHALEY. How long did it take them to try Clifford W. Hartridge?

Mr. SLADE. In that case they were members of the association that presented the charge against him and had the grievance against him.

Mr. WHALEY. Did they not kick him out inside of three months?

Mr. SLADE. Yes; because they were members of the association more powerful than Hartridge.

Mr. WHALEY. And your idea is, now, that Marshall is more powerful than the bar association of New York, and the whole bar of New York?

Mr. SLADE. No; but Marshall has more power than I have, and if he went there personally and I went there personally they would take Marshall's word in preference to mine, who occupies the high office of United States district attorney. I realize what I am up against.

Mr. WHALEY. It strikes me that if they were all afraid of him they would want to get rid of him.

Mr. SLADE. Just you proceed here, and you will get voluntary testimony; you will get notices from many lawyers who will be willing to come here. I would not come here and make any statement unless I knew, and I come to the highest court of justice in my country that I think will do me justice. This case has received so much publicity and so much notoriety, the newspapers have criticized it—the New York Press wrote an article eight months ago saying, "Why does not the Department of Justice take it up?" We have not found one judge to take it up. James W. Osborne was a special United States district attorney at that time. That, in itself, ought to have prompted the courts to take notice of it. The United States district attorney goes to his associate and has this girl apprehended before his own court. I want you gentlemen, before you take my statement, to ask the Supreme Court of the State of New York—the members of the supreme court and the city court as to what they think of my brother and I, although we are young men. They take our words on many occasions where the rules require affidavits. That is because I have committed no offense, and because I feel that

Marshall knows it, I come to you here. If I were guilty of an offense I would seek favor of the man prosecuting me, but I do not. If Marshall came to me he could not buy me off.

Mr. IGOE. The statement has been made here, in a roundabout way, or the suggestion has come, that the whole matter would be dropped if you would consent; that is, the cases in the United States court would be dropped, and that you and your brother had declined to do that. Do you also make that statement?

Mr. SLADE. That information came to me, sir, yes, sir, and I would not do it, and I tell you now that if I spend every dollar that I ever made I am going to get justice some place.

Mr. STEELE. Did that suggestion come from Mr. Marshall?

Mr. SLADE. That I would not say.

Mr. IGO. Will you furnish the committee with the names of those witnesses?

Mr. SLADE. At the proper time we will do everything.

The CHAIRMAN. Who was the man that told you that would be done?

Mr. SLADE. That was given to my oldest brother.

The CHAIRMAN. Who was the man?

Mr. SLADE. I do not know whether I am, at this time, in a position to give the committee his name.

The CHAIRMAN. Why?

Mr. SLADE. It was given to us as a matter of confidence, but I will supply it to you.

The CHAIRMAN. Was it one of your brother's friends, or a stranger?

Mr. SLADE. That would not make any difference. We feel we have a great duty to perform when a man comes to us and gives us a thing in confidence, not to violate that confidence. If he allows us to do it I will be glad to give it to the committee.

Mr. IGOE. Was he representing Mr. Marshall in making that statement? Was he an agent of Mr. Marshall?

Mr. SLADE. I do not believe he was representing anybody. He may have had certain information. He may have spoken to some one.

Mr. IGOE. I understood that in some way the information had come to you that Mr. Marshall was willing to do certain things. Now, have you any witnesses who can at any time come before the committee and prove that?

Mr. SLADE. I say we shall be glad to submit those names. We would not make any charges unless we could substantiate them.

The CHAIRMAN. You just said that man represented nobody. Mr. Igoe wants to know whether you have any witness who came to you with authority from Mr. Marshall?

Mr. SLADE. No; I would not make any such statement that he came from Mr. Marshall, by authority. I would not charge Mr. Marshall with sending him there.

Mr. WHALEY. How can we take it up, then?

Mr. SLADE. I shall ascertain it from him. If it was a fact, I shall endeavor to find out and let you have it.

Mr. WILLIAMS. Your brother, as I remember his statement, said that it would be dropped at this time, if you would dismiss the other proceedings, and that the slate would be wiped off. Your brother made that statement?

Mr. SLADE. There is no doubt about it.

Mr. WILLIAMS. Upon what authority did he make that statement?

Mr. SLADE. I shall certainly present it to you.

Mr. WILLIAMS. Upon what authority?

Mr. SLADE. I do not know; I have never spoken to the man myself.

Mr. HILL. I did not so understand the other day. I think the brother of this man, the other day, made the statement that he believed that if they dropped this prosecution—if he would offer to drop this prosecution, he still would not stop.

Mr. IGOE. My recollection is that it had come to him through various channels.

Mr. CARAWAY. He used the words "subterranean channels."

Mr. IGOE. Possibly.

The CHAIRMAN. This is an important statement that you and your brother have made, and it will go a long ways in influencing this committee in its action. If you have the name of any responsible person who will testify before this committee that Mr. Marshall has been conniving with you and your firm to prevent this investigation, by offering you immunity from prosecution, now is your time to present it—give us that name now.

Mr. SLADE. I am very frank with the committee. I would not make a statement unless I knew it. I would not present any name to the committee unless I knew it was a fact. It came to me through my brother, but whether the gentleman came from Mr. Marshall, I would be disloyal to myself to make any such statement, as to whether he came from Mr. Marshall, or as his emissary.

The CHAIRMAN. But you are lawyer enough to know that Mr. Marshall would have to be connected in some way with an effort of that kind, or even a suggestion of that kind, and if you can not connect him, you should frankly tell the committee so.

Mr. SLADE. I am saying now, frankly, that I can not connect it. I do not know. He may have been, or may not.

Mr. CARLIN. You do not even know the man's name, now, do you?

Mr. SLADE. There is one man, but I do not believe I should give the name to the committee now. I do not believe he came from Mr. Marshall. His name was mentioned here two or three times.

Mr. STEELE. You say his name was mentioned here two or three times; what is the name?

Mr. SLADE. Herman H. Oppenheimer. He thinks all interests would be best served by all proceedings being dropped.

The CHAIRMAN. Which proceedings?

Mr. SLADE. All the proceedings.

The CHAIRMAN. All the proceedings in the House of Representatives?

Mr. SLADE. Yes.

The CHAIRMAN. And all proceedings in New York?

Mr. SLADE. Yes.

Mr. GARD. As a lawyer, you know you would have to have something more than the belief of Mr. Oppenheimer?

Mr. SLADE. Oh, I agree with you perfectly.

The CHAIRMAN. When was that statement made?

Mr. SLADE. Two or three weeks ago.

Mr. DANFORTH. Why did you not take this matter to the Department of Justice here in Washington?

Mr. SLADE. We were asked that the other day.

Mr. DANFORTH. Well, did you answer the question?

Mr. SLADE. Yes; we attempted to go to the Department of Justice, and we were preceded there by somebody from New York, because they knew all about the case. The minute my brother entered, they said: "Oh, you were in the Osborne case."

Mr. DANFORTH. Your idea is that from the head of the Department Justice down, you can get no justice or fair consideration from the Federal authorities?

Mr. SLADE. From my personal knowledge I am frank to say I do not think I can in this case, because the men involved are more powerful than I. A United States attorney is involved, and a special United States attorney, and I am but a plain lawyer.

Mr. CARLIN. Do you know, of your own knowledge, of anything corrupt or anything that would justify impeachment of Mr. Marshall by the Congress of the United States?

Mr. SLADE. The matters which we have submitted; his entire conduct; his zeal in obtaining these various indictments, with knowledge there was no evidence there; his urging the arrest of the girl; his manufacturing of evidence; manufacturing of the photograph.

Mr. CARLIN. Outside of the Tanzer case?

Mr. SLADE. The Kugel case.

Mr. CARLIN. You were counsel in that case?

Mr. SLADE. It would not make any difference. It was in open court.

Mr. CARLIN. You only connect Mr. Marshall with the Kugel case by reason of the fact that his assistant——

Mr. SLADE (interposing). By reason of the fact that we wrote him a letter, and he still persisted in trying him, although there was no evidence.

Mr. NELSON. When did you first learn of the impeachment of Mr. Marshall?

Mr. SLADE. When I read it in the newspapers.

Mr. NELSON. Then you communicated with Mr. Buchanan?

Mr. SLADE. Yes; I never saw Mr. Buchanan in my life until then.

Mr. NELSON. And it was afterwards that you communicated these facts to Mr. Buchanan?

Mr. SLADE. Yes. May I submit the names of some witnesses who will substantiate the charges here?

The CHAIRMAN. Can you tell what each witness will testify?

Mr. SLADE. It will take an awful long time.

Mr. CARLIN. We asked your brother to submit a memorandum of those charges, and opposite each charge to just write the name of the witness who would testify to it.

Mr. SLADE. Well, he did not say so to me.

Mr. CARLIN. That would expedite the hearing.

Mr. SLADE. I will do it. I will take it upstairs when the committee adjourns and write it out. Now, in the Kugel case, I want to submit the following names: Selig Goodman, 19 Beach Street, New York City.

Mr. IGOE. I suggest that the witness take the statement and write the names of the witnesses in, and then hand it in as part of the record.

The CHAIRMAN. That would expedite matters, if the witness can do that.

Mr. WHALEY. We want to know what each witness is going to testify.

Mr. GARD. This first man testified in the Kugel case?

Mr. SLADE. Yes.

Mr. GARD. What is the substance of his testimony?

Mr. SLADE. That he was called before the grand jury 30 or 32 times on the very same subject.

Mr. GARD. That is, on the question of concealing assets in bankruptcy?

Mr. SLADE. Yes; and that at the time Mr. Kugel was on trial upstairs an attempt was made to have him change his testimony by saying that Mr. Kugel was the one who delivered the merchandise to him.

The CHAIRMAN. Was Kugel indicted with somebody else?

Mr. SLADE. Yes; with two others.

The CHAIRMAN. Who were the other two?

Mr. SLADE. Feldman.

The CHAIRMAN. Was he convicted?

Mr. SLADE. No; the indictment was subsequently dismissed.

Mr. NELSON. This man who was called before the grand jury, was he one of Kugel's witnesses?

Mr. SLADE. Yes.

Mr. NELSON. Was he taken before the grand jury?

Mr. SLADE. I do not know.

Mr. WILLIAMS. He was the express agent, was he not?

Mr. SLADE. Yes.

Mr. CARLIN. How many names have you there, Mr. Slade?

Mr. SLADE. Twenty-one in the Osborne case.

Mr. WILLIAMS. There is a little confusion in my mind. What is Oppenheimer's connection with this Kugel case?

Mr. SLADE. Oppenheimer had no connection of any kind.

Mr. WILLIAMS. In what way is he connected with the case?

Mr. SLADE. He was indicted seven times.

Mr. WILLIAMS. For concealing the assets of a bankrupt?

Mr. SLADE. Yes; after Judge Thomas had sustained a demurrer on the statute of limitations.

The CHAIRMAN. Was he indicted on conspiracy to conceal assets?

Mr. SLADE. Yes.

The CHAIRMAN. Was there evidence that the assets were concealed before the referee was appointed?

Mr. SLADE. I could not tell you what occurred before the grand jury, because he has never been tried.

Mr. CARLIN. How many of these 21 people are under indictment?

Mr. SLADE. None of them.

Mr. CARLIN. Or have been indicted?

Mr. SLADE. Not one, except the Tanzer girls, which I have not added—Rose Tanzer and Dora Tanzer—I beg your pardon; yes, there is one—two—Albert McCullough and Frank Safford.

Mr. HILL. Have you the Tanzer girls' names on that list?

Mr. SLADE. No; but I will put them down—three of them.

Mr. BUCHANAN. That will conclude your statement, will it not, Mr. Slade?

Mr. SLADE. Yes. I think my brother went over it pretty well.

The CHAIRMAN. Mr. Slade, you are a lawyer. Now, are you prepared to state succinctly just exactly the charges you make against Mr. Snowden Marshall?

Mr. SLADE. I say Marshall has abused his power as district attorney for the purpose of vindicating and saving Jim Osborne; I say that Osborne and Marshall did acquiesce in and encourage perjury and subornation of perjury; I say Marshall has abused criminal processes and is guilty of obstruction of justice.

The CHAIRMAN. Those are general charges. Now, state the facts upon which you base those charges?

Mr. SLADE. That is the purpose of my brother and I appearing here. I have submitted them now. I tried to make it as clear as I possibly could, and I am as certain as I am standing here that the committee will be convinced beyond any doubt when they hear these various witnesses.

Mr. CARLIN. These charges relate more specifically to the Kugel case?

Mr. SLADE. And the Oppenheimer case and the Osborne-Tanzer case.

Mr. WILLIAMS. I would like to hear you answer specifically the chairman's question—not a general charge that he obstructed justice, etc., but to state the exact act or thing which he did, from which you conclude that he obstructed justice.

Mr. SLADE. The manufacturing of the photograph. Do you want anything more? If I, as a lawyer, manufacture a photograph and give it—

Mr. BUCHANAN (interposing). Would you permit me to make a statement, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. BUCHANAN. This question has been asked by about half a dozen different members of the committee. The committee asked to have those charges in writing and they have done it. I have been taken away from my other affairs for the past two weeks, and now I would like to get rid of this hearing and to know what the committee is going to do, without any superfluous questions.

Mr. SLADE. I believe, Congressman Williams, you do not want any other answer to that than that I was indicted for what Mr. Marshall considered a criminal offense, for manufacturing a photograph. I was indicted for it, and why does it not apply to Mr. Marshall?

Mr. WILLIAMS. What is your evidence or proof that Marshall did manufacture that photograph?

Mr. SLADE. The man who made the photograph, Clarence Le Gendre.

Mr. WILLIAMS. Have you any other corroborative facts or testimony?

Mr. SLADE. The fact that the photograph was manufactured and delivered to Mr. Marshall.

Mr. CARLIN. He says the post-office inspector will be able to testify.

Mr. SLADE. Mr. Baker.

Mr. HILL. And Mr. Le Gendre will tell you that he made that photograph.

The CHAIRMAN. Does the post-office inspector know these facts?

Mr. SLADE. Yes.

The CHAIRMAN. What is his name?

Mr. SLADE. Baker. He refused to participate in it.

The CHAIRMAN. Did you give his initials?

Mr. SLADE. I do not know his initials, but he is the only Mr. Baker who is connected with the Department of Justice.

Mr. NELSON. He is the man who said it was ridiculous to think you would fall for it?

Mr. SLADE. Yes. I was trying a case in Springfield, Mass., and I was the most astounded man in the world when they charged me with manufacturing a composite photograph. I did not know such a thing could be made.

Mr. NELSON. You never offered this in evidence in that case at all, did you?

Mr. SLADE. No; we never knew about it until the indictment came along. I was trying to see Mr. Le Gendre for nearly five months.

Mr. NELSON. You made no offer nor performed any act which would indicate that you intended to use this photograph?

Mr. SLADE. Absolutely none, as appears by the statement which is now on file with the New York World by the man in whose employ he is.

The CHAIRMAN. Was the composite photograph published in the newspapers?

Mr. SLADE. No; but it was published in the newspapers charging me with the indictment. Mr. Marshall was the one who asked to have it made, and who had it made. He would not dare deny it. It is in his possession.

The CHAIRMAN. Have you finished now?

Mr. SLADE. I have, unless the committee wants to hear me further. Will the committee permit me to do this: I will leave these charges here; I have a copy of them here. Will the committee permit me to take the names home and write out a sort of a skeleton for them?

Mr. NELSON. You mean as to what each witness will testify?

Mr. SLADE. Yes.

The CHAIRMAN. I think that would be all right.

Mr. SLADE. For instance, here is Max D. Steuer.

The CHAIRMAN. And showing that you will prove such and such facts through this or that witness, stated briefly.

Mr. SLADE. Yes. I will give you the address of every one of the witnesses, too. I have that permission, then, from the committee?

The CHAIRMAN. Yes.

Mr. GARD. I think that is a very good suggestion that you have made.

Mr. SLADE. It will assist the committee a good deal. For example, Mr. Farrington went down and saw Mr. Marshall, and told him that he was the girl's employer; that she told him the very same thing, what she told me.

Mr. NELSON. That is a good idea. Suppose you do it.

Mr. SLADE. I will do it.

The CHAIRMAN. Mr. Buchanan, is that all you wish to ask of this witness?

Mr. BUCHANAN. Yes, that is all.

Mr. WILLIAMS. You mean that to apply to all witnesses for the substantiation of all these charges, do you not?

Mr. SLADE. As far as I possibly can.

Mr. GARD. All the charges that have been made that he is interested in.

Mr. SLADE. Yes.

The CHAIRMAN. What is the pleasure of the committee, gentlemen?

Mr. HILL. Gentlemen of the committee, I do not know what your feeling is in this matter, but I understand the rule usually in *prima facie* cases, it is not a case that amounts to a conviction, but it is such evidence as would warrant the committee in believing that there is probable guilt under some of the indictments as the charges are laid. Now, there are a number of cases, if you will refer to Hind's Precedents, where resolutions have been reported out, ordering an investigation or authorizing a committee to take the necessary steps to secure papers and documents and persons for investigation, even where there was nothing more than a rumor offered by a Member of Congress from a newspaper editorial. That was in a Pennsylvania case, I think. You will find it in Hind's Precedents, section 2503. The Member of Congress there offered nothing except an editorial from a newspaper, and it was referred to the committee, and they made a memorial of their preliminary hearing on that, and with that only, is the statement of Hind's Precedents, they reported back for a further investigation.

Mr. STEELE. What case was that?

Mr. HILL. I did not take the name, but you can find it in the third volume of Hind's Precedents, at page 2503. And in the case of Mr. Justice Chase—you have probably read of that—there it was on the evidence that was offered probably by only a Member of Congress, or possibly in that case it was on a complaint filed by someone in his district, and the statement of a Member of Congress that the informant was a reliable person. That is all they had there. That is to be found in the same volume, volume three; and following right along—I did not give you the section number there. Judge Joseph L. Smith was investigated for some reason; that is, when he was a territorial judge, and the Member of Congress stated that the man who had made the complaint out in his district was a reliable man, and that was the only *prima facie* proof they had before them.

Mr. NELSON. You are trying to show that we have the authority to act?

Mr. HILL. I am endeavoring to show that I believe that in the short argument I am going to make now that the committee has enough evidence to warrant it in making an investigation.

Mr. NELSON. There is no question but what we can act at this time. The only question is whether we think we have had enough facts placed before us.

Mr. HILL. That is what I am driving at. I am going to try to capitulate or epitomize all the stuff you have heard, and to show you why I believe you have enough at this time to act.

Mr. CARLIN. Have you any other witnesses here to be heard to-day?

Mr. HILL. No; we have no other witnesses here to-day. We are looking for a couple of affidavits to be filed, and we will offer these

newspaper reports with reference to this testimony given the other day.

Mr. BUCHANAN. I read a letter yesterday denying that.

Mr. HILL. It is merely on the subject of the newspaper rumor charging impeachment, to show that these rumors have not been true.

Mr. IGOE. Are there any other of these charges that you have, in addition to the ones covered by Mr. Slade and the ones covered by yourself and Mr. Buchanan the other day—are there any charges specifically named in that resolution, in addition to those, upon which you have anything to offer?

Mr. HILL. Nothing except the names of the witnesses that can be procured whenever you go into a thorough investigation.

Mr. CARLIN. If I understand your statement, then, you have no other proof at present, but you have the names of all the witnesses?

Mr. HILL. Yes; who, when they are subpoenaed, will be willing to come.

Mr. CARLIN. Have you any further oral testimony to offer here, Mr. Buchanan?

Mr. BUCHANAN. The most important part, from my point of view, to be proved, we will be unable to get the people here without subpoenas.

Mr. CARLIN. Will you give us the names of the parties you wish subpoenaed?

Mr. BUCHANAN. No; I will not do that to-day, any further than I have, because the committee has sufficient to act now on its authority. I introduced the resolution the other day to give them the authority.

Mr. IGOE. Suppose there is such a charge?

Mr. BUCHANAN. Well, later on I can get the evidence. I will say this to the committee: If, in the committee's opinion, this statement that we have put before them as evidence does not justify them to ask for authority to subpoena witnesses and make a record, I feel that any further effort on my part would be without avail.

Mr. NELSON. It was very clear that you did not have this information when you offered those impeachment charges.

Mr. BUCHANAN. Now, the gentleman is stretching his imagination on that. I will say to the gentleman, just for his information, that my first information in regard to the misconduct of this man in New York was in regard to a trade union action, so let not the members jump to the conclusion that I have not been having some observation of the misconduct of this man.

Mr. NELSON. Let me be understood. I said that this Slade case came to your notice after you had filed the impeachment.

Mr. BUCHANAN. Yes.

Mr. NELSON. Now, have you anything that you wish us to consider in the way of evidence?

Mr. BUCHANAN. I will put some matter before the committee; I will put this Bauerlein case, that I expect to have affidavits on; but I would like to have the committee understand, if I could not, in my brutal way, impress the committee—

Mr. NELSON (interposing). Not if you get angry; if you will be patient, we will be patient.

Mr. BUCHANAN. I do not want the committee to investigate this on my account. My mother was left a widow when I was about 10 years

old, and I have got my knocks ever since; to some degree, I have had an uphill pull, and I have got them so frequently and often that I have practically got calloused to them, and so far as anything that has occurred to me in this matter is concerned, I feel confident that I am going to be able to take care of it, so unless the committee would think that it concerns the Congress, or the Members of Congress, I do not want to put the committee of this House of Congress to any trouble or expense on my part.

Mr. NELSON. Let me interrupt you right there. You say to this committee, conceding now that you yourself personally do not urge that, but I want you to consider yourself now as a Member of this House, and speaking to another Member of Congress; do you believe that this indictment of you comes as a retaliation for anything that you have done officially?

Mr. BUCHANAN. I do. Well, I will not say "officially" alone; officially and otherwise.

Mr. NELSON. Acting in your official capacity?

Mr. BUCHANAN. If you want me to express my belief—if that is of any advantage to the committee, my personal opinion about those things—I have worked ever since I have been in Congress for the government manufacture of munitions of war; I have deprived, perhaps, through my efforts, private manufacturers of millions of dollars of profit, and saved that much to the people by some amendments that I have gotten in through the Naval Affairs Committee. I have worked to that end for years. I will say further that in my activity for the labor people, I have been blacklisted. I refused to let my union take action on account of me being blacklisted by two companies, stating that when they all blacklisted me I would go back to the farm and dig it out of the ground again.

Mr. NELSON. My question is asked in perfectly good faith. Do you charge this indictment having been brought because of your activities?

Mr. BUCHANAN. No; I do not charge that. I thought you were asking my opinion.

Mr. NELSON. Well, your opinion, then?

Mr. BUCHANAN. Yes; if my opinion is of any value to you.

Mr. NELSON. The question is right here: There are two points to this case, as I see them, Mr. Buchanan; one is that we are dealing with a Member of Congress, who has been indicted after he filed impeachment charges. Now, I believe that the high prerogatives of the House demand that we be zealous for our own rights. Then we have the Slade suit here, where citizens are being denied justice—that is the charge—that is another branch, and in the House, evidently, these two things were very pronounced; for instance, Mr. Mann and Mr. Henry pointed out that because of the official capacity in which you appeared, the House should do something.

Mr. BUCHANAN. Mr. Nelson, let me say this: I was not pretending to act as a Member of Congress when I was making the effort I was through Labor's Peace Council, which was from about the 22d of June until the 30th of July; that is when I resigned; but my activities ceased before that—several days before; but I have all the time and everywhere that I have had the opportunity, and I intend to keep it up as long as I have got any influence to oppose the vicious influence that secures profit by private manufacture of munitions

of war, which is practically the Wall Street financial and commercial pirates. They are represented well through the Navy League. Of course, I have done that all the time.

Mr. NELSON. And you think they inspired this attack on you as retaliation?

Mr. BUCHANAN. I do. Now, you get up to: Do I think this indictment has been secured for that reason? I do think so, and my reasons for that are that my information was that after they took these Chicago associates to New York, and after only putting one of them on the witness stand—and I read you the letters yesterday of denial of their statements in the newspapers, in which one of them had been made to appear that he had been before the grand jury, when he had not, denying all the statements that were accredited to them in the newspapers, and then after they had taken them there and questioned them, I suppose, and found out they did not know anything; after finding out that they would not testify to anything, I suppose, that was damaging to me, my understanding was that even—this I could not prove, though I will say—but I was informed that even the district attorney admitted himself that there was no evidence to justify the indictment, but I can not prove that, and I do not want to put that in here as a charge, although I believe that is true. I am expressing my opinion now, you understand; and while that grand jury either took a recess, I am informed, or was discharged and called again—one of the two—I do not know how they do those things—and then afterwards there were some other witnesses taken there, whom I feel confident, those that know me, anyway, that went there, would not perjure themselves—I will stake my right arm they would not perjure themselves—and unless they did they could not get any evidence that would justify this indictment against me on the charges in the indictment.

The CHAIRMAN. Do you know these witnesses, Mr. Buchanan?

Mr. BUCHANAN. Yes; Mr. Gompers is one of them and Frank Morrison is another. They know me from personal knowledge.

Mr. WILLIAMS. Frank, give us this information: As I remember, the newspapers stated that the grand jury was investigating your connection with this trades council, and in view of finding the indictment against you and Fowler and others the newspapers contained such statements before you filed your impeachment charges. Did you know before you filed those impeachment charges that the grand jury were investigating your connection with this organization?

Mr. BUCHANAN. All I knew about it was what I saw in the newspapers, but I, of course, do not consider them an authority.

Mr. WILLIAMS. I ask this in connection with what Mr. Nelson raised, whether you thought you were indicted because you filed these impeachment charges. I wanted to get at the fact that they were investigating you before you filed them, is that not true?

Mr. BUCHANAN. I just stated that they were not only investigating, but they took some of my associates in there from Chicago to New York.

Mr. WILLIAMS. That was before you filed your charges?

Mr. BUCHANAN. Yes.

Mr. IGEE. And then they called some additional witnesses and reviewed the charges and found an indictment?

Mr. BUCHANAN. The indictment was issued.

Mr. NELSON. Do you know positively that they dropped the consideration of an indictment at one time?

Mr. BUCHANAN. I just stated I believe that. From the information I have got I am of that opinion.

Mr. CARLIN. Mr. Buchanan, in your first impeachment charges you charge that the district attorney had procured indictments fraudulently and corruptly. You did not have in mind the Slade indictment at that time, did you?

Mr. BUCHANAN. In my first indictment?

Mr. CARLIN. In your first charge of impeachment?

Mr. BUCHANAN. I do not remember that I had that in my first charge.

Mr. NELSON. You had the Osborne case in mind, though, earlier, did you not?

Mr. BUCHANAN. Yes. The Osborne case is a famous case; that is, there is a good deal of talk about it—the Osborne case. I do not know whether you gentlemen have heard it or not. There has been a great deal of talk about it in New York among the labor people. Rae Tanzer was a working girl; that is, she was forewoman in a workshop, and while I never met nor heard of the Slades, although I did remember their names in the case, I had heard of the Osborne case before this. I know a great many labor people from all parts of the country who talked about those things. Of course, that prosecution was stopped. The first time my attention was called to it was due to a strike of the printing trades in New York. They were about to be prosecuted under the Sherman Act.

Mr. WILLIAMS. You feel you are innocent? You know it?

Mr. BUCHANAN. I know that; yes.

Mr. WILLIAMS. And, of course, you feel as if you have been wrongfully indicted, and indicted without any evidence?

Mr. BUCHANAN. Yes; but I do not want this action taken on my account.

Mr. WILLIAMS. You feel that way, and I would like to know, and the committee would like to know—we can not presume that they did not have evidence; the presumption is they did have. Can you give us any line on how we can know that they did not have any evidence?

Mr. BUCHANAN. Yes; by going to the House and asking authority to subpoena witnesses and papers, and going to that office and getting the documentary evidence there. That is the only way you can get it if you really want it.

Mr. NELSON. If you say to me, for instance: "I believe that this action was because of activities carried on by myself as a Member of Congress," then I think you are entitled to it, but if you hedge about it, I have got to look around for some other reasons, namely, the general treatment of citizens in denying them justice.

Mr. BUCHANAN. It would not have any effect on this case. If these practices had not been going on there, I would not ask you to take it up on this line. They are carrying on a propaganda of indictment. But what would you say if I should say it is done by somebody else ordering H. Snowden Marshall to do this, on information I have that I do not want to bring in here or would not undertake to bring before the committee?

Mr. DANFORTH. At any time?

Mr. BUCHANAN. Not now. You asked whether I believed that. I do not think the committee ought to take down, as a matter of record, what I believe.

Mr. GARD. We would be very glad to have your entire attitude.

Mr. BUCHANAN. I believe if H. Snowden Marshall, in my case, had been let alone, the indictment never would have been made.

Mr. HILL. I think that too, gentlemen.

Mr. BUCHANAN. If the committee does not feel that it has enough from me now, I do not care to have the committee act on my account.

(At this point Mr. Williams asked the privilege to make a statement off the record, which was accorded him.)

Mr. TAGGART. Do you charge here before the committee that this indictment was brought against you on account of anything you said or anything you did in your capacity as a Member of Congress on the floor of the House?

Mr. BUCHANAN. I have not made any such charge, and do not wish to. You said "as a Member of the House"?

Mr. TAGGART. Yes. You impeached Marshall and Marshall had you indicted?

Mr. BUCHANAN. Well, that is my opinion. I have so stated.

Mr. TAGGART. And you want that question investigated, as to whether or not that had any influence on him?

Mr. BUCHANAN. No. I will say this, Mr. Taggart, that is not important to me. The important thing to me is that I believe this office, as it is being administered in New York, is corrupt and is conducted in a way that is a malfeasance of office, and for the protection of the people and for the public good, I want the investigation made.

Mr. IGOE. But the other Members of the House are as much interested as you. If a Member of the House be attacked in court for something he does as a Member, it is apparent all the Members are interested.

Mr. BUCHANAN. I am not going to make any such charges before you, or say I can prove that is the fact.

Mr. CARLIN. Do you think the evidence we might procure from the grand jury room might establish that fact?

Mr. BUCHANAN. That it was done on account of my activities?

Mr. CARLIN. Yes.

Mr. BUCHANAN. I do not know of anything that was done in the grand jury that would establish that fact. What I do feel certain of is that you will find, unless the records are doctored there in some way or other, that this indictment has been obtained without evidence to justify the charges. I do not care about the charges, whether they are good or bad, and I do not think my attorney is going to attack the indictment, because I am not guilty of the charges, and they can not prove that I am guilty without it is by perjured evidence.

Mr. NELSON. Well, it is a fact, then, that you, a Member of Congress, have acted officially, and you do charge that there are no facts warranting your indictment?

Mr. BUCHANAN. I know—you gentlemen do not know it—but I do know that there is not a scintilla of evidence to indict me on the charges in that indictment.

Mr. NELSON. You have waived your rights of immunity?

Mr. BUCHANAN. Yes. Now, let me explain about waiving my rights of immunity. I waived my rights of immunity after consulting my friends in the House, and they advised me that I was not immune. I take the position that a Member has no right to waive his rights of immunity. If a Member of Congress has immunity, it is for the purpose of protecting the people whom he represents; not for protecting him as an individual, and, therefore, I take the position that a Member of Congress is not at liberty to waive immunity that is given him under the Constitution, but I was advised by my friends, whom I thought were able attorneys, that it is so doubtful about the immunity, under a decision in the Williamson case, I believe, that probably I would not be sustained if I raised that point.

Mr. NELSON. Mr. Hill, you have looked into the matter. Have you searched the records here to see whether or not there is some possibility of our having given up our rights in this case, and set a bad precedent? I want to agree with Mr. Buchanan; I believe precedent shows that Congress will not let a Member give up his immunity.

Mr. HILL. The Williamson case was the one that the Department of Justice hung onto, that he could not claim immunity, and the reading of that decision—while it is not on all fours with this, yet those friends whom he consulted decided there would not be anything especially gained by claiming immunity; that he would sooner or later have to go there.

Mr. NELSON. I can see that for political or other reasons, it might not be wise, but do we surrender any prerogative of immunity for a Member of this House by this?

Mr. HILL. In that decision they go over it very thoroughly, and charge it as a misdemeanor, and that is all Mr. Buchanan is charged with, as coming in the class that is not immune.

Mr. NELSON. Crimes, misdemeanors, and breaches of the peace?

Mr. HILL. Yes.

Mr. NELSON. He is charged with a misdemeanor?

Mr. HILL. They claim that a misdemeanor does not come within those charges for which he is immune, and for that reason he may be indicted during a session of Congress, and we did not think he would lose anything, or that the House would lose anything, by going ahead and offering himself up.

The CHAIRMAN. If it be agreeable to the committee, I think we had better take a recess now until 2.30; that will give us an hour and 25 minutes.

(Whereupon, at 1.05 o'clock p. m., a recess was taken until 2.30 o'clock p. m.)

AFTER RECESS.

The CHAIRMAN. The committee will come to order, as there seems to be a quorum present. Just before recess Mr. Hill was about to make a statement which he desires to have the committee hear. Mr. Hill, you will now proceed.

Mr. HILL. Gentlemen of the committee, I do not think I will require more than 10 or 15 minutes, but I want to say a few words with reference to the hearings that have been had this week on this matter, particularly concerning the amount of evidence necessary to submit to this committee to make a prima facie case. When you think of the amount of evidence that has been produced here

it seems to me that in accordance with the custom which I understand prevails with this committee you should report out this resolution asking for the investigation.

Now, you gentlemen know that the practice with reference to preliminary hearings on a resolution for an investigation of this kind, looking toward the impeachment of any public official, is to consider it as an *ex parte* proceeding. In other words, you gentlemen simply have to obtain that amount of evidence that would warrant you in voting for the investigation.

As I started to say this morning, I am only going to refer you now to a few instances where there has been but a small amount of evidence produced at the preliminary hearing, but which was sufficient to inspire the committee to report out the resolution. Now, in the third volume of Hinds's Precedents, sec. 2503, you will find a record of a case where the House, on the strength of a newspaper statement, ordered an investigation into the conduct of a justice of the Supreme Court. It is stated in that case that the Member of Congress from the place where this justice lived called the attention of the House, or the attention of this committee, to the matter and asked for an investigation, based simply on a newspaper editorial. That was all the committee had in that case and on that they reported back a resolution asking for power to make the investigation.

The CHAIRMAN. What was the substance of the charge in that case, Mr. Hill?

Mr. HILL. The charge made in the newspaper was as follows (reading):

At a private gathering of gentlemen of both political parties, one of the justices of the Supreme Court spoke very freely concerning the reconstruction measures of Congress and declared in the most positive terms that all these laws were unconstitutional, and that the court would be sure to pronounce them so. Some of his friends near him suggested that it was quite indiscreet to speak so positively, when he at once repeated the views in a more emphatic manner.

It seems he was a member of the court that would pass on those measures and he was giving his opinion of them in advance.

The CHAIRMAN. Who was the judge?

Mr. HILL. It was Judge Glenni W. Scofield, of Pennsylvania. And that was all that was offered, simply the newspaper article quoting his speech, and after considering it the committee decided to report back the resolution for the investigation.

Mr. STEELE. I think you are mistaken, Mr. Hill. That was the Congressman that reported the matter; his name was Glenni W. Scofield.

Mr. HILL. Yes, sir; I see, he was the Congressman; it does not give the name of the Judge right here. But that investigation was made on that one spark of evidence, which was nothing more than a newspaper editorial.

Then there is the case of Mark H. Delahay, United States district judge in Kansas, in which there was but one single memorial filed with the committee, setting out the charges, and that was all that was regarded necessary.

Then, going on over to the Smith case, given in section 2490. In that case there was an investigation into the conduct of Judge Joseph L. Smith. It seems that a person within the jurisdiction of the court out there filed some sort of complaint against the Judge

about some irregularities in his conduct; I think that was the case where he was receiving fees from people who were seeking justice in his court, and they charged him with illegally receiving attorney's fees. This fellow simply wrote out his complaint and sent it in here and the matter was received and referred to this Committee on the Judiciary; the committee proceeded to make an investigation, and called in the Delegate (this was a territorial judge) and asked him about the man who had made the complaint; they asked who he was and what he knew about him, and the Delegate replied, or testified here before the committee that the man was a reliable citizen in the jurisdiction of the court, and on the statement of this Member of Congress that the man who filed the charges was a reliable man, this committee returned the resolution, asking for power to make a complete investigation, and they did make it. I do not remember just what the outcome was, but I think he was impeached, or resigned.

So, as I say, the proceedings up to this stage are ex parte, and no great volume of evidence is required. There has been some evidence offered here or statements made, and quite a number of names of parties given who can substantiate a majority of the charges made in this case against Mr. Buchanan.

But, aside from all that, and all you have heard about things that have happened in the district attorney's office and the action of his assistants, as given in these charges, about certain things that have been suppressed, of coercion and things like that, we come down to this one thing that impresses me more than anything else in this case, and that is that a member of this great body of Congress has been assailed and indicted under such circumstances as we show. If you expect to protect the high prerogatives of the members of this body it seems to me that on the statement of that Member of Congress that you all have served two or three terms with here, when he stands here and tells you that he does not care what kind of evidence was produced before that grand jury to secure that indictment, and he tells you that the charges in that indictment are false and that he is not guilty of a single one of them, it seems to me, I say, that you are bound to order this investigation. Here a member of this body, one of your associates, has been assailed, but he has waived his rights as a Member of Congress and has offered himself at the altar and stated he would claim no immunities, and that he wanted to be fair about it; he tells you that he knows he is not guilty of a single charge set out in that indictment, and it seems to me that in view of the numerous cases that have been reported back for investigation, cases which do not come nearly so close to this body as this one does, you are warranted under the circumstances as disclosed here to report back the resolution for an investigation.

As to whether there has been any uncanny practice or not in connection with the securing of this indictment against Mr. Buchanan an investigation would show. He tells you that he thoroughly believes there would have been no indictment had he not filed those articles of impeachment. After the indictment was reported out by the grand jury then the newspapers gave it out that they had these fellows under investigation, that they were receiving German money and trying to stir up trouble in the munition plants of this country. This was all given out from the district attorney's office, without naming Mr. Buchanan, with the statement that they were making an

investigation to indict these people. Shortly afterwards, after this newspaper sentiment had been created, Mr. Buchanan was assailed and indicted. In the meantime, he tells you that he had brought to his attention certain irregularities in the office of the district attorney, and that he filed these articles not because he feared indictment but because of these irregularities which existed there at the time. He did not then believe there would be an indictment brought against him.

It seems to me that it narrows down to this: That the great, high prerogatives of the Members of this body of Congress are being assailed, and that when a member appears before you and tells you that he knows positively that there is not one scintilla of evidence that can be produced to convict him the investigation this resolution calls for should be made.

You could not get it more positive than that. He has said that he did not want you to report back this resolution solely because he himself was a Member of Congress, but I say to you that he takes that modest attitude because he is one of your colleagues. As his counsel I take the position that it is your duty, for the purpose of protecting the rights of the Members of this body, to make this investigation; in view of the statement made to you by Mr. Buchanan here regarding this indictment against him, and you have it in evidence before you, I believe this body should immediately return this resolution for this investigation. And I do not think it ought to be confined to the question of how Mr. Buchanan's indictment was secured; it should include all the things Mr. Buchanan has charged here before this committee which the committee believes are impeachable charges.

The names of a number of witnesses have been filed with you to substantiate the charges made. It may be that none of these will be sustained; but that is what we want to find out. If Mr. Marshall is to be exonerated Mr. Buchanan wants to know it and the country wants to know it. The newspapers all over the country have been talking about this case, North, South, East, and West, and it has now become a public question, concerning Congress and one of its members, but everybody, everywhere, and I feel, under the circumstances, that there has been a sufficient amount of evidence offered for an *ex parte* proceeding like this to warrant the committee to enter upon an investigation of the conduct of Mr. Marshall's office.

I will say further that if you want me to do so I will file a brief setting forth these memoranda and references in regard to such proceedings before Congress. I am willing to do that; I am willing to file you a brief setting out that the indictment, in my opinion as a lawyer, and I believe when you go into it you gentlemen as lawyers will agree with me, was secured in a manner that would, on the trial of the case, be declared null and void. I am informed that this is not in evidence before you, but I give you my opinion on it. I am informed by counsel for Mr. Buchanan that in the southern district of New York he has information that a stenographer was present before the grand jury and took down all the evidence, was in there during all the deliberations of the grand jury, and not serving as an assistant district attorney or under the direction of the district attorney; he was making a complete transcript of all the evidence. The courts have held time and time again that an indictment brought

under such circumstances was null and void. There has been one exception, in the case of Judge Sessions, in New York, and here in recent months the question raised in the district courts down there has always been decided on Judge Sessions' decision, and this recent decision by Mr. Thomas, over in Connecticut, in Two hundred and twenty-first Federal Courts, which sets out that it does not matter if the stenographer is the district attorney or an assistant district attorney, if he serves in that capacity, the indictment is null and void.

If this is true, then Mr. Buchanan has no legal indictment standing against him; that would be true even if the evidence were sufficient to convict him when he was on trial in a court of justice.

But even if those things were not true, here Mr. Buchanan has told you, one of your colleagues and associates in Congress, occupying and holding the high position that you gentlemen do, and owing a duty to his constituency, that his rights and prerogatives as a Member are involved by a court that is apparently seeking to take him away from the service of his constituency, then I think on his statement, when he tells you that he cares not how the indictment was secured, nor what the evidence was, but that he knows he is not guilty of one of the charges alleged in the indictment, then I feel that you are warranted in returning this resolution to the House asking for an investigation into the manipulations of the office of the district attorney. That comes directly under the charges in which he says that they have been finding indictments against reputable and peaceful citizens without evidence.

Gentlemen, I do not care to argue this matter any further, but if there is any brief you would like me to submit I will be glad to do so.

The CHAIRMAN. Mr. Hill, I want to ask you to submit a brief taking up these individual charges, 40 in number.

Mr. BUCHANAN (interposing). If you will permit me, Mr. Chairman, before you get away from Mr. Hill's statement. He has made a statement as my counsel, but ex-Senator Bailey is also my attorney. I had a talk with him yesterday and I think he is going over to New York to-night. It is not my wish and it is his decision not to make any attack on the indictment at all.

Mr. DANFORTH. I have heard Mr. Buchanan's statement this morning, Mr. Hill, and I have listened to your statement here this afternoon and taking those together I want to ask you why Mr. Buchanan is not in better shape now to go on trial and be acquitted and then go ahead with these proceedings? What you propose for him now seems to be an interference with the due course of justice. If we take it up now it will tie the whole thing up and the trial can not come off, and, of course, we don't know how we will come out if we do take it up.

Mr. HILL. We have talked about that and Mr. Buchanan has insisted right along that he preferred to go immediately to trial next week, as he wants to make the shortest possible shift of the case and reach a decision in court; but his counsel—his New York counsel and Mr. Bailey—think it would be best to take its own due course. It might be a year or two before Mr. Buchanan could be tried, and there is no reason as far as I can see why this committee should not make any investigation that it desires to make.

Mr. DANFORTH. If we should go into this investigation it would take a year for us to discover anything, and during that year it is fair

to assume the office of the United States district attorney would be so much occupied with the investigation that it would not be able to attend to its regular work.

Mr. HILL. I should not wonder but that may be true.

Mr. DANFORTH. So what does anyone make out of it?

Mr. HILL. Mr. Buchanan wants to go immediately into it, before you could get started with this investigation, but his counsel advise otherwise, as they may desire to go further up to another court.

Mr. BUCHANAN. I can probably state my position clearer than Mr. Hill can. I do not want this committee of Congress to make this investigation on account of anything that directly affects me. I am sincere in regard to that, and it was with reluctance that I consented to the advice of my friends that this matter be taken up at this time, in view of the fact that I had information concerning the propaganda going on over there, and of the indictments that were denying peaceful, law-abiding citizens of their fundamental constitutional rights. If there was nothing in this matter to investigate except those things in regard to myself I would urge that it be dropped; but there is much more than that. Still, this concludes the information I wanted to put before the committee to-day, and as stated it seems sufficient to justify the committee to ask for power to subpoena witnesses and documents to investigate these charges.

The CHAIRMAN. You don't want charges contained in 5, 6, and 7, with reference to the manner of procuring the indictment against you, investigated?

Mr. BUCHANAN. It does not say against me, but for securing indictments without proper evidence.

The CHAIRMAN. I understand.

Mr. BUCHANAN. I consented to let them go in. I say if that was the only thing to be investigated I would drop it.

The CHAIRMAN. But you want that feature investigated?

Mr. BUCHANAN. Yes, sir; because it does not apply to me alone, but to others as well. If there is a thorough and proper investigation made I think you can develop sufficient evidence without bringing me in it at all, if you wanted to. I believe you will find that rights are being interfered with due to an abuse of power by one of our Federal officials. Abuse of power by public officials results in conflict with citizens' fundamental and constitutional rights and I think it is one of the worst crimes a public officer can be guilty of, and when it results in denying a citizen's constitutional rights it then becomes a very serious crime. And not only that, but their malfeasance in office over there justifies their committee asking for the power to subpoena such witnesses as will develop to the satisfaction of any judicial body the facts in this case, and if such an investigation is based on truth and justice there is no question of what the result will be.

I do not care to take up any further time of the committee, but I just wanted to be fully understood; I don't want anyone to think that I am pressing this investigation solely on account of my connection with it. There are other cases where it can be shown that abuse of power has been practiced and that citizens have been indicted without evidence to justify it and denied their rights that our forefathers fought for, and unless these things are guarded, gentlemen, then the efforts of our forefathers have been without avail.

Mr. DANFORTH. The statements that have been made before the committee so far have been confined to four charges: That contained in charge numbered 4 in the impeachment charges of January 12; that in charges 5, 6, and 7 that makes a second charge, and that in 17 to 22, inclusive; that is in regard to bringing in outside charges, who was influencing them so the defendants did not get justice. The fourth charge, what we may call the Tanzier-Ozburn case, from charges 25 to 38. There are just four, and it takes in about half of the numerically numbered charges. What are you going to do about the rest of them? You have furnished us no statement or the names of any witnesses as to those.

Mr. HILL. About the eighth charge takes up the question of newspaper reports—

Mr. DANFORTH. I think that was covered as to the Tanzier-Ozburn charges.

Mr. HILL. Those referring to the Tanzier-Ozburn matter do not have any newspaper reference there; but this would be included in the charges about newspaper articles.

Mr. DANFORTH. I think there is something in that list of Tanzier-Ozburn charges that would cover that. I think 29 would, having used the powers of his office to wilfully slander the good name and professional standing, etc.

Mr. HILL. Possibly it might.

Mr. DANFORTH. That would cover any newspaper notoriety. The principal charge was the charge in 1, 2, and 3; this is certainly the one which I supposed Mr. Buchanan objected to, and we have no evidence on that at all.

Mr. HILL. I think the one covering the Buchanan case begins with 5, charge 5.

Mr. DANFORTH. Did you give a statement in regard to that—5, 6, and 7?

Mr. HILL. The purpose of those charges—they should be coupled together—was to show that they worked in collusion with their associates—

Mr. DANFORTH (interrupting). Which is that, the first or second?

Mr. HILL. The second, most specifically; but, I think those first three coupled together cover the matter. I think those articles there are meant to cover the fact that they colluded together for the purpose of reaping great profits out of the criminal practice there. Mr. Marshall would say to one of his office fellows, "You must defend this fellow, and I will prosecute him."

The CHAIRMAN. The first one is charging violation of the custom laws, etc.

Mr. DANFORTH. We have not had a word on that.

The CHAIRMAN. I should say that would be a very important charge.

Mr. HILL. I have marked that for witnesses; I do not have any myself, but I understand there is a fellow named Bright who will testify about that, but I do not know what he knows.

Mr. BUCHANAN. I have some very important witnesses on that particular charge.

Mr. HILL. On the discussion of any of these charges here where they have not been offered, I will submit the names of witnesses who appear to be examined when you got into this investigation. If I

fail to submit witnesses to substantiate any of these charges then they can be dropped by the committee.

Mr. DANFORTH. And not considered?

Mr. HILL. And not considered. Either I will get the names of witnesses, or refer you to some evidence of some character, and if I fail to do that then you can dismiss those charges.

Mr. DANFORTH. That is all, Mr. Chairman.

The CHAIRMAN. That is all you care to say, Mr. Hill?

Mr. HILL. I think that is all.

The CHAIRMAN. When do you think you can furnish us that brief?

Mr. HILL. Within the next couple of days. I will be busy to-morrow.

Mr. BUCHANAN. Before you eliminate that about the violation of the custom laws, I have a case——

Mr. HILL. I have that here to put in. It was not brought out here.

Mr. BUCHANAN. I have witnesses to——

Mr. HILL. I know, but I will submit that in the brief.

Mr. BUCHANAN. I have witnesses to show that the prosecution was neglected, where matters had been referred to the District Attorney and he has refused to further the prosecution. There is a case pending now where the collection of \$400,000 was involved. I have not that data here, though.

Mr. HILL. Yes, I remember that case.

Mr. BUCHANAN. That was in regard to the customs case where it was changed from a criminal to a civil suit.

Mr. HILL. Yes, the case of smuggling about \$400,000 of custom receipts.

Mr. BUCHANAN. I have some other cases which I think can be developed. I do not know whether I can develop them myself or not, but some of them I am confident can be made out. I would have to make a trip over to New York to further develop them myself.

Mr. HILL. There are so many of these charges, but many of them mean about the same thing.

The CHAIRMAN. We would like to have you group those charges.

Mr. HILL. All right, sir. You asked me for a copy of that indictment. I suppose you would like to keep that [handing the chairman a paper]. The other one I gave you was the third or fourth print and was very dim; this is a better one.

The CHAIRMAN. I think it has been read in the record.

Mr. HILL. No, I think the reporter did not take that down when I read it; he only took my comments, and there was some question that the other might not be used. This copy has been verified.

I will get up that data and my brief covering the various allegations as soon as I can. I will not promise to do it before Saturday or Monday. My time is pretty well taken up now with other matters.

Mr. GARD. Can't that come a little sooner, Mr. Chairman? We ought to have that.

The CHAIRMAN. Yes, it is very important, but I do not feel like asking Mr. Hill to neglect other matters to attend to this for us at once.

Mr. HILL. If I can I will get it earlier than that.

The CHAIRMAN. I don't think there will be any trouble about that.

Mr. HILL. I will get it here tomorrow, if possible.

The CHAIRMAN. Mr. Buchanan, if there is nothing further you desire to present now the committee will go into executive session.

Mr. BUCHANAN. I believe that is all, Mr. Chairman.

(Thereupon, at 3.15 p. m., the committee went into executive session.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY.

WASHINGTON, D. C., *Wednesday, February 2, 1916.*

Pursuant to action of the committee of January 31, 1916, Hon. Edwin Y. Webb, chairman, on February 1, 1916, appointed the following subcommittee of three to act for and on behalf of the full committee: Hon. Charles C. Carlin (chairman), Hon. Warren Gard, and Hon. John M. Nelson.

Present: Mr. Carlin (chairman), Mr. Gard, and Mr. Nelson, members of the subcommittee, and Mr. Buchanan, of Illinois.

Mr. CARLIN. The Judiciary Committee have appointed a subcommittee, which we are, to inquire into the charges which you have made against Mr. H. Snowden Marshall, district attorney for the southern district of New York, and we have now the power to subpoena witnesses. At the request of the full committee, we propose to conduct as much of this investigation as possible in the city of Washington, so that the members of the full committee may participate.

Before we begin this investigation, I want to say to you that we have grouped together the various charges which you have made, as follows:

Group A, to consist of charges 1, 2, 3, and 4, which we designate as conspiracy with persons and corporations:

1. I charge him with having conspired with persons, firms, and corporations, their agents and servants, to grant such persons, firms, and corporations the privilege of violating various criminal, neutrality, interstate commerce, or custom laws of the United States in the southern district of New York.
2. I charge him with securing for persons or corporations great financial profit in consequence of the violation of the United States laws.
3. I charge him with corruptly and collusively participating in such conspiracies.
4. I charge him with corruptly neglecting and refusing to prosecute gross and notorious violations of various criminal, neutrality, custom revenue, and antitrust laws of the United States within said judicial district.

Group B, to consist of charges 5, 6, 7, 8, 13, 14, 15, 23, and 24, matters relating to improper procuring of indictments:

5. I charge him with corruptly inducing and procuring grand juries to return into the district court for the southern district of New York of indictments charging crimes without there being evidence before said grand jury which would in any degree justify the finding and filing of such indictments.

6. I charge him with being guilty of oppression in corruptly procuring indictments from the grand jury in said district charging reputable citizens with crime, although there was no evidence before the grand jury which would in the least warrant such charges.

7. I charge him with corruptly conspiring with other persons to spread broadcast throughout the United States maliciously false newspaper publications and reports, emanating as official statements and purporting to describe results of investigations conducted by said United States attorney and his assistants, with the object of destroying friendly relations between the United States and one or more foreign Governments.

8. I charge him with unlawfully and feloniously abusing the legal process before the grand jury in said district of New York, the Secret Service, and the Bureau of Investigation and Inquiry of the Department of Justice in furtherance of such conspiracy aforesaid.

13. I charge him with having corruptly used the powers of his office for the purpose of slandering and libeling peaceable and law-abiding people to their great injury.

14. I charge him with having abetted, approved, acquiesced, and permitted unlawful and oppressive misuse of subpoenas and other process before grand juries in said southern district of New York.

15. I charge him with having deprived law-abiding citizens of their legal rights, privileges, and immunities.

23. I charge him with being a party to a conspiracy participated in by his assistant district attorneys and other officials connected with the administration of justice in the said southern district of New York, for the purpose of unlawfully manipulating and controlling the selection of grand and petit jurors in connection with cases in the courts of said district.

24. I charge him with having been guilty of acts by which the rights of the United States and that of individuals have been unlawfully prejudiced and the orderly and fair administration of justice defeated or obstructed in one or more instances.

Group C, to consist of charges 9, 10, 11, and 12, relating to the shipment of war munitions and conspiracies with foreign Governments:

9. I charge him with having knowledge of the existence of circumstances from which knowledge is imputed to him that large sums of money have been expended for or on behalf of foreign Governments and of various purveyors and manufacturers of war munitions for the purpose of influencing the actions of said United States attorney in furtherance of a conspiracy.

10. I charge him with having corruptly neglected or refused to prosecute men who have made the port of New York, within said judicial district, a military or naval base for foreign belligerent powers.

11. I charge him with corruptly neglecting and refusing to prosecute violations of Federal statutes prohibiting the loading and shipment of explosives on ships carrying passengers within said judicial district.

12. I charge him with corruptly neglecting and refusing to prosecute violations of the foreign-enlistment act and laws of the United States within said district.

Group D, to consist of charge 16, unlawful use of public funds in labor matters:

16. I charge him with aiding, abetting, and approving unlawful expenditures of public moneys in violation of the laws of the United States.

Group E, to consist of charges 17, 18, 19, 20, 21, and 22, attempting to improperly influence and improperly procure judges for the southern district of New York:

17. I charge him with being guilty of attempts by private solicitation of influencing the official actions and opinions of judges in the southern district of New York while in the performance of their judicial duties.

18. I charge him with having used the powers of his office to cause and procure a discrimination in the assignment of judges to conduct trials in said district, so as to discriminate against one or more resident judges.

19. I charge him with having used the powers of his office to procure or assist in the procurement of judges to be imported into the southern district of New York from other districts for the trial of cases in said district by falsely representing the condition of judicial business within said district.

20. I charge him with being guilty of private solicitation with intent to influence the official acts and decisions of judges imported as aforesaid.

21. I charge him with having attempted to corruptly control decisions and official actions of one or more of such imported judges.

22. I charge him with having procured the assignment of one or more imported judges for the conduct of trials in the said district for the purpose of preventing defendants in such cases from receiving a fair and impartial trial at the hands of resident judges.

Group F, to consist of charges 25, 26, 27, 29, 30, 31, 32, 33, and 37, which relate to Rae Tanzer and improper conduct with James W. Osborne, in improperly using the power of his office:

25. I charge him with having employed the powers of his office for the purpose of shielding and to prevent the exposure of unlawful and improper conduct of one James W.

Osborne in relation to facts involved in civil litigation which was pending in the State court in the State of New York

26. I charge him with unlawfully protecting the said Osborne and others from prosecution for the violation of United States laws.

27. I charge him with willfully and corruptly refusing and neglecting to prosecute gross and notorious violations of the United States statutes committed by said James W. Osborne and others in the city and State of New York within said district.

29. I charge him with having used the powers of his said office as United States district attorney to corruptly and willfully defame, slander, and injure the good name and professional standing of law-abiding citizens of the United States, to their great injury, for the purpose of protecting the private individual interests of James W. Osborne.

30. I charge him with having corruptly failed, neglected, and refused to prosecute persons who, while acting as witnesses for the United States in the trial of causes, committed the crime of perjury, subornation of perjury, and conspiracy in connection with the cases of United States against Rae Tanzer, United States against Frank D. Safford, and United States against Albert J. McCullough et al.

31. I charge him with having used and employed the United States grand jury in the southern district of New York for the purpose of attempting to establish records which might be used in defense of James W. Osborn, H. Snowden Marshall, Roger B. Wood, and Samuel H. Hershenstein (the last two being assistant United States district attorneys under said H. Snowden Marshall), and not for the purpose of investigation of violations of the United States laws.

32. I charge him with corruptly and willfully failing to remove certain of his assistant district attorneys who destroyed documentary evidence material in the trial of a pending case in the United States district court for the southern district of New York.

33. I charge him with corruptly and maliciously causing to be instituted criminal proceedings against Rae Tanzer and others for the purpose of protecting James W. Osborne, a special United States district attorney and a personal intimate friend of said H. Snowden Marshall.

37. I charge him with having corruptly and willfully withheld and failed to present before the grand jury material and important evidence in connection with alleged investigations instituted before said grand jury by H. Snowden Marshall in relation to the cases of United States against Rae Tanzer and United States against Albert J. McCullough et al., and others.

Group G, to consist of charges 28, 34, 35, 36, 38, 39, and 40, which we designate as relating to his personal unfitness:

28. I charge him with having prostituted the office of United States district attorney for the southern district of New York.

34. I charge him with corruptly and willfully failing and refusing to present to the court the trial of cases material and important evidence and in concealing or assisting and acquiescing in the concealment or destruction of material and important evidence relating to pending cases in the United States district court for the southern district of New York.

35. I charge him with being corrupt, grossly negligent, and unfit to retain the office as United States district attorney for the southern district of New York.

36. I charge him with having willfully and persistently violated the laws of the United States in connection with the performance by him of the duties of such United States district attorney for said southern district of New York.

38. I charge him with having corruptly and willfully refused and neglected to take cognizance of unlawful conduct of his assistant district attorneys in connection with the performance by them of official duties as such assistant district attorneys.

39. I charge him with corruptly participating in or acquiescing to the presentation to the court in trial of cases in the southern district of New York of alleged evidence which he knew to be untrue and manufactured, or in the manufacture of and attempt to manufacture such alleged evidence.

40. I charge him with producing willful injury and wrong to litigants in said district court and to citizens of the United States by his unlawful and improper conduct.

I would like to ask you if you have any suggestion to make, relating to the method in which we have grouped these charges, that would be helpful to the subcommittee.

Mr. BUCHANAN. Helpfulness in grouping together?

Mr. CARLIN. Yes.

Mr. BUCHANAN. Well, I will say this: That I have got confidence in this committee's judgment in regard to a matter of this kind—perhaps more confidence than I would have in my own judgment; but to give you my judgment on it, I would have to take the charges and go over them, and so forth.

Mr. CARLIN. Will you do that?

Mr. BUCHANAN. I will do it; yes. It will take a little time.

Mr. NELSON. Mr. Buchanan, in assisting us in grouping the charges, will you also kindly indicate which group would be most helpful to investigate first, and also indicate what witnesses would be most helpful to examine under each group?

Mr. BUCHANAN. Yes; I will do that. I would prefer to wait until I have looked over these charges.

(Thereupon the subcommittee adjourned.)

EXHIBIT No. 17, FEBRUARY 2, 1916.

DENVER, COLO., *January 18, 1916.*

HON. FRANK BUCHANAN,
House of Representatives of the United States,
Washington, D. C.

MY DEAR SIR: In compliance with your telegram of the 13th instant and my night letter telegram of the 14th instant to you, I herewith inclose you my affidavit, covering specifically the H. Snowden Marshall feature—evading official duty to prosecute prima facie case of a gross violation of the fraud statute involved. Cause the affidavits named in my affidavit to be produced, read same with exhibits carefully, and you will find that H. Snowden Marshall is guilty of compounding a felony. Some 19 days after the assets had already been sold and diverted to a competing company, the self-constituted reorganization committee of the United Wireless Telegraph Co., issued to Mr. Wm. F. Albeen, a certificate of deposit for money and stock received by it through the United States mails, based upon the plan of reorganization dated February 1, 1912, without any modification—incontrovertible evidence to convict these self-confessed thieves, as it would be impossible 19 days after the assets had been sold and diverted to a competing company, to buy the assets from the trustees in bankruptcy and reorganize The United Wireless Telegraph Co., as per the plan dated February 1, 1912. Mr. Albeen still holds this certificate of deposit, notwithstanding that the scoundrels have him credited on the "liquidating books" as having received "liquidating stock." I have a duplicate set of the liquidating books that were used to defraud the stockholders. My letter to you of January 13, will give you some idea of what is coming.

Yours, truly,

J. HUGH BAUERLEIN.

STATE OF COLORADO,
City and County of Denver, ss:

New York City post-office inspector's case No. 38195-E. In the matter of the reorganization committee of The United Wireless Telegraph Co., bankrupt, using the United States mails to defraud.

J. Hugh Bauerlein, of lawful age, being first duly sworn, on his oath deposes and says: That on to wit, the 6th day of May, A. D. 1913, one O. S. Parker made and filed his certain affidavit in this case and afterwards on to wit, the 11th day of September, A. D. 1913, the said O. S. Parker made and filed another and supplemental affidavit therein, charging that he had been defrauded by said reorganization committee through the use of the United States mails.

That on to wit, the 14th day of August, A. D. 1913, one Jackson M. Greiner made and filed his certain affidavit in this case and afterwards on to wit, the 8th day of January, A. D. 1914, the said Jackson M. Greiner made and filed another and supplemental affidavit therein, charging that he had been defrauded by said reorganization committee through the use of the United States mails.

That on to wit, the 15th day of September, A. D. 1913, one August A. Schaibly made and filed his certain affidavit in this case and afterwards on to wit, the 13th day of October, A. D. 1913, the said August A. Schaibly made and filed another and supple-

mental affidavit therein, charging that he had been defrauded by said reorganization committee through the use of the United States mails.

That on to wit, the 28th day of March, A. D. 1914, one Wm. F. Albeen made and filed his certain affidavit in this case, charging that he had been defrauded by said reorganization committee through the use of the United States mails.

That on to wit, the 3d day of June, A. D. 1914, the Chief Inspector of the Post Office Department wrote this affiant, as follows, to wit:

Reorganization committee of The United Wireless Telegraph Co., New York
City, N. Y.

GFH-EVB-6.
2-C.

38195-E.

POST OFFICE DEPARTMENT,
OFFICE OF CHIEF INSPECTOR,
Washington, June 3, 1914.

Mr. J. HUGH BAUERLEIN, *Denver, Colo.*

SIR: With reference to your communication dated May 27, 1914, requesting information concerning your complaint of alleged use of the mails for fraudulent purposes by the reorganization committee of The United Wireless Telegraph Co. of New York City, I have to state that this is still receiving the attention of a post-office inspector.

However, the department is in receipt of a preliminary report showing that the case has been taken up with The United States attorney's office at New York City, and that the assistant United States attorney, with whom the inspector discussed the matter, was of the opinion, that from the evidence so far obtained, there was no apparent violation of the fraud statute involved. The case is being held by the inspector pending further developments.

Upon receipt of final report in the department, you will be informed of the result of the investigation.

Respectfully,

JOE P. JOHNSTON,
Chief Inspector.

That afterwards and on to wit: The first day of July A. D. 1914, affiant called the attention of H. Snowden Marshall, United States district attorney for the southern district of New York, to the prima facie case made by the affidavits of the said parties, as stated herein, and that under date of the 7th day of July, A. D. 1914, said H. Snowden Marshall, United States district attorney aforesaid, wrote this affiant in relation thereto, stating, among other things:

"I acknowledge receipt of your letters, dated June 29 and July 1, 1914, in relation to the Reorganization Committee of the United Wireless Telegraph Co. for fraudulent use of the United States mails. The affidavits which you speak of have not heretofore been called to my attention and, therefore, of course, were not read by me."

That on to wit, the 4th day of December, A. D. 1914, the Chief Inspector of the Post Office Department wrote this affiant, as follows, to wit:

"With reference to the letter of this office addressed to you under date of June 3, 1914, concerning your complaint alleging use of the mails for fraudulent purposes by the Reorganization Committee of the United Wireless Telegraph Co. of New York City, I have to state that the investigation of this case has now been completed, all the facts and evidence obtained having been submitted to the United States attorney for the proper district, who advised against prosecution. The evidence disclosed in the investigation did not warrant the issuance of a fraud order.

"Respectfully,

"JOE P. JOHNSTON,
"Chief Inspector."

And further deponent saith not.

J. HUGH BAUERLEIN.

Subscribed and sworn to before me this 18th day of January, A. D. 1916.

[SEAL.]

BENJAMIN F. NOLL,

Notary Public, in and for the city and county of Denver, State of Colorado.

My commission expires March 2, 1919.

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., February 4, 1916—11.15 o'clock a. m.

Present: Mr. C. C. Carlin (chairman), and Messrs. Nelson and Gard.

The CHAIRMAN. Mr. Buchanan, we asked you the other day as to the groupings the committee had made of your charges. You stated you would examine them and let us know about that. Have you examined them?

Mr. BUCHANAN. Yes, sir; I have examined them and I think they are properly grouped.

Mr. NELSON. I think you will find we bunched them under indictments and perhaps they overlap, but it is the main outline that we are after.

Mr. HILL. We compared your classification with mine, and while you took out some that I had not, I think the grouping is all right.

Mr. BUCHANAN. I think the committee's judgment is better than mine on that. I have here, Mr. Chairman, two affidavits which I desire to file with the committee.

The CHAIRMAN. They will be accepted and marked "Exhibits 18 and 19," respectively.

(The affidavits referred to were thereupon received by the committee and marked by the stenographer "Exhibits 18 and 19," respectively.)

EXHIBIT No. 18, FEBRUARY 4, 1916.

AFFIDAVIT.

THE STATE OF OHIO,
Franklin County, ss:

Frank Tewell, of lawful age, a resident of 584 Reinhart Avenue, Columbus, Franklin County, Ohio, being first duly sworn, deposes and says that he has been a resident of the city of Columbus all of his life; that he has been a machinist for a period of fifteen years; that he is a member of Local No. 55 of the International Association of Machinists and has been such since the 24th day of October, 1911. That during the fall of 1915, J. Sandoe was president, and Austin Taylor was Secretary, and Harry M. VanHise was business manager of said local.

That affidavit, during the year 1915 and including the 30th of October, 1915, had been and was an employee of The Dunlap Manufacturing Company, a corporation manufacturing of various devices and especially lathes and shrapnel. That on or about the 11th of November, 1915, said corporation, through its attorneys, filed a suit in the Court of Common Pleas of Franklin County, Ohio, to enjoin the said Local Lodge and the national officers and this affiant and others from interfering with said plant and to enforce a lockout that had been promulgated by said company against its employees on or about the 30th of October, 1915. That on the date said injunction or temporary restraining order was issued, the Local Business Agent and Committee of the Machinists employed F. S. Monnett, attorney-at-law, and Pugh & Pugh, attorneys-at-law, to dissolve said injunction, and that Lawrence Pugh appeared before Judge E. B. Dillon and had a date fixed and other necessary proceedings were taken to have the injunction either modified or dissolved and said F. S. Monnett advised them to get in touch with the Labor Commissioner, at Washington, to send one of the Board of Conciliation at once to Columbus to see if a reconciliation or settlement and arbitration could not at once be effected, so that the men could go back to work at once. Thereupon, upon prompt response, the Labor Commissioner sent one William Blackman and Mr. Monnett and said William Blackman and Mr. VanHise, the business manager, began negotiations at once for restoration of the men to the plant or company and to settle the dispute that had arisen. That until said professional employment of said F. S. Monnett, affiant says that in no wise or in no way had counseled any of said officers, men or employes, either directly or indirectly, concerning said strike or lockout; that his employment was based solely upon the litigation that had been instituted before he was consulted concerning said litigation.

Affiant further says that on or about the 17th day of January, 1916, T. C. Dunlap, the manager of said The Dunlap Manufacturing Company, sent a card to affiant's brother, asking him to make a date with him, saying that he had something very important to affiant if he could get in touch with him, and that he should get in touch with him at the earliest possible moment. Thereupon, affiant met the said T. C. Dunlap on a Parsons Avenue street car, whereupon the said T. C. Dunlap told affiant that affiant had personal knowledge that said F. S. Monnett was at the bottom of this strike in their factory and that he had that proof down at the shop that affiant knew it. That they wanted to make arrangements to send affiant to New York to testify against F. S. Monnett and that he would make a nice thing out of it. Affiant thereupon told him that he was a — liar; that he never had known Monnett; that he had never done any business for or with him until he was hired in the injunction suit. He then demanded of him to know who the man was who was making up such a lie. He replied that he was not at liberty to now tell him. Then he insisted that his brother knew probably something about it and affiant told him his brother knew nothing about it because there was nothing to know about it. Then he wanted to know when affiant was going to return to their company to work and this ended the conversation.

Affiant says from the whole demeanor and insistency and urgency of the said Dunlap and the suggestion of a large reward to affiant in some mysterious manner that it was his expectation for him to accept the employment and falsely connect up the said F. S. Monnett in some manner with the instigation of the aforesaid strike, and further deponent saith not.

FRANK TEWELL.

Sworn to before me by the said Frank Tewell and by him subscribed in my presence this 27th day of January, 1916.

[SEAL.]

R. R. TELSINAN,
Notary Public, Franklin County, Ohio.

EXHIBIT No. 19, FEBRUARY 4, 1916.

AFFIDAVIT.

THE STATE OF OHIO,
Franklin County, ss.:

Harry M. Van Hise, of lawful age, a resident of 308 West Eighth Avenue, Columbus, Franklin County, Ohio, being first duly sworn, deposes and says that he is a resident of the city of Columbus and has been since about the year 1904. That he is a machinist by trade and has been for about 16 years; that he is a member of local No. 55 of the International Association of Machinists and has been since about 1903.

That said local, about the middle of October, had frequent meetings and conferences and appointed a committee, of which Frank Tewell, a resident of 584 Reinhart Avenue, was a member, and that said affiant was the business manager of said local; that the purpose of said committee was to settle a grievance that the members of the said local had with certain employers as to long hours and small pay, and that the said committee had a conference, among other employers, with The Dunlap Manufacturing Company, with a view of getting an amicable adjustment both as to hours and wages. That an adjustment or agreement was formulated by said committee and the same was voted upon unanimously by the employees of The Dunlap Manufacturing Company, to be submitted to said company for the improvement and betterment of their conditions as such employees and the purpose of maintaining the integrity of their union and to equalize and harmonize their wages and hours of labor with that of other employees similarly situated. That said proposition was duly submitted to The Dunlap Manufacturing Company and time was asked by the said company to consider the same; that said company, without accepting or rejecting the same and without carrying out any negotiations, on October 30, 1915, announced a lockout, and about two weeks thereafter filed a petition in equity in the court of common pleas of Franklin County, Ohio, and obtained a temporary restraining order against said men picketing or interfering in anywise with said manufacturing plant. That on said date of said injunction said affiant, with others of the said local and representing the machinists' union, called upon Frank S. Monnett, attorney at law, 501 Outlook Building, Columbus, Ohio, and laid before him the pleadings and proceedings and asked his advice as to what steps to take, and after canvassing every phase of the litigation, he advised a communication at once with the Department of Labor at Washington, D. C., and so dictated a letter in affiant's presence, asking the department to assign a commissioner of conciliation, as allowed by Federal statute,

to be sent to Columbus at the earliest convenience, in order to settle the differences between the company and the members of the said machinists' union and to put the men back to work, and also to move to modify said restraining order and further to take the matter up with the company's officials and see if some working basis could not at once be agreed upon. That up and until the hour of such employment Mr. F. S. Monnett aforesaid had never been consulted, directly or indirectly, by any of the said machinists' union and never prior to that, to affiant's knowledge, had represented them professionally or otherwise. That said lockout was brought about purely, simply, and wholly by the members of said local working for said respective companies, in the usual and ordinary way, not only with the said The Dunlap Manufacturing Company, but with The Modern Tool & Die Company, in which a settlement was effected with The Modern Tool & Die Company, but rejected by The Dunlap Manufacturing Company on substantially the same offer. That each and all of said former employees of The Dunlap Manufacturing Company were hoping and expecting to make a settlement and had the benefit of Hon. William Blackman, of the Department of Commerce and Labor, who acted as an arbitrator between the men and the company, and the said affiant and others of said committee invoked the aid of the State Arbitration Board and the Hon. Burwell, of the State Board of Arbitration, made diligent effort to have the men restored to their respective jobs on the basis of improved hours and wages.

That the said F. S. Monnett earnestly and strenuously tried to have the two boards effect such settlement so that the men could return to work, and also professionally tried to have the injunction dissolved.

Affiant further believes that there was no basis or grounds whatever for the said T. C. Dunlap's allegations that Mr. Tewell had information or that Mr. Monnett had taken part in any manner whatsoever in bringing about the strike or lockout or continuing or maintaining the same. That affiant being the business manager and at all the negotiations with the company and the men, he was in a position to know, had any such suggestion or inducement or attempt been made, either by Mr. Monnett or any other person whatsoever, and no such influence or suggestion came to affiant's knowledge to induce said strike or bring about said lockout, and further affiant saith not.

HARRY M. VAN HISE.

Sworn to before me by the said Harry M. Van Hise and by him subscribed in my presence this 27th day of January, 1916.

[SEAL.]

H. H. FELSMAN,
Notary Public, Franklin County, Ohio.

Mr. BUCHANAN. I also desire to file two letters, one dated New York, January 13, 1916, and another dated New York, January 16, 1916, addressed to me and signed by Charles Bright.

The CHAIRMAN. They will be received, and marked "Buchanan Exhibits 20 and 21," respectively.

(The letters referred to were thereupon received in evidence and marked "Exhibits 20 and 21," respectively.)

EXHIBIT No. 20, FEBRUARY 4, 1916.

18 WEST TWENTY-FIFTH STREET, NEW YORK CITY,
January 15, 1916.

HON. FRANK BUCHANAN,
Washington, D. C.

DEAR SIR:

I received your favor of the 14th inst., but failed to find therein the copy of *your resolution* which you said you were inclosing.

Will you kindly send me two copies, so I can give one to my attorney.

With your resolutions before me I will be able to confine my affidavits & evidence to such matter as may be pertinent and relevant to the inquiry on your resolution.

I gather from your letter that the matter of affidavits & evidence is not of great urgency, so that I need not proceed with undue haste in preparing the material & affidavits.

I am now expecting the arrival from Paris of Mr. Wm. Harper, a director & secretary of the South American Securities Company. He is known in Washington and I believe will prove an important witness, as his experience with the U. S. attorney office in New York was such that in a long communication to the Attorney

General he pointed out that instead of prosecuting and seeking the indictments, the office was really obstructing justice by delays and objections of a frivolous character obviously advanced in bad faith for the purpose.

I note that you misread my letter of the 13th inst. The name of the man indicted in New York is Favour not Tavern.

I should here mention that we almost failed to obtain Mr. Favour's indictment for perjury by the New York County grand jury owing to the machinations, misconduct, and false reports made to their superior, the Atty. Gen'l., by the U. S. attys. office in New York, but I was able to see through their scheme and managed to frustrate their plan to defeat justice and save their client, Mr. Favour (formerly defended by O'Gorman Battle & Marshall and then by O'Gorman, Battle & Co.), from indictment, by making a flying visit of one day to Washington, when after two visits to the Department of Justice and three visits to the Treasury Dept., I was able to arrange the matter and bear back in triumph to the New York County district atty. and grand jury the copies of the incriminating documents absolutely essential to the indictment and conviction of Mr. Favour in New York—to wit, the perjured affidavits that he had made to the U. S. Treasury Dept. and for making which said Favour and one Charles R. Demarest would have been indicted also by the U. S. grand jury were it not for the misconduct of the U. S. atty. in charge of the matter in New York, who purposely delayed the matter, deliberately misstated the facts, and improperly prepared the case.

I obtained the copies of the perjured affidavits after they had been definitely refused to the District Attorney of New York County by the U. S. Treasury Dept., acting upon the legal advice of the Dept. of Justice of the U. S. The advice of the Attorney General was based upon the incorrect report made to the Atty. General by the U. S. attorney in New York. As soon as I pointed out and proved the incorrect and misleading nature of the report of the N. York atty, then the Dept. of Justice and the Treasury Dept. REVERSED their advice and decisions and agreed to supply us with the copies of the perjured affidavits—as obviously our company had an absolute right to solicit, inspect, and receive copies of perjured affidavits that had been submitted & filed in the name of our company by its unfaithful officers. This in order to prosecute same.

When under subpoena from the grand jury and when I had partly testified I was served before the grand jury room by Murray, Prentice & Howland with an order to show cause why I should not be committed to jail for contempt. Not to be intimidated I completed my evidence & with the aid of the copies of the false affidavits that I managed to obtain from the U. S. Treasury, Favour was indicted by the New York County grand jury.

Favour was not indicted by the Federal grand jury owing entirely to the misconduct of the U. S. prosecuting atty.

Favour is protected because he was the agent of J. D. Rockefeller. Prentice is John D.'s son-in-law.

I must again trouble you to ask your secretary to make & forward me a copy of this letter. I remain,

Very truly, yours,

CHARLES BRIGHT.

EXHIBIT No. 21--FEBRUARY 4, 1916.

NEW YORK, January 13, 1916.

HON. FRANK BUCHANAN,
Representative of Congress, Washington.

DEAR SIR: I write you this in great haste, because I note in the evening papers a paragraph headed "Buchanan's Marshall charges get set back"—saying, "committee has made two futile attempts to find evidence;" "Indications are that unless Buchanan produces proofs there will be no further developments."

Well, if you are in need of proofs I have them, and all the principal proofs in documentary form of an irreputable character confirmed by grand jury minutes, etc., so that my cases do not depend upon oral evidence of witnesses liable to be reached, influenced, or got out of the way by the powerful influences endangered thereby.

I have the evidence to prove that the U. S. Attorney's office for the Southern D of New York is used systematically to prevent the indictment of certain groups and the criminal acts of their agents; that the office has deliberately suppressed facts and made false reports to the Attorney General at Washington; that it has purposely delayed cases where the evidence was so strong that conviction was practically a foregone conclusion if the parties were indicted and brought to trial. The modus operandi adopted in such cases being to delay obtaining the indictments 3 years so that the

cases were outlawed; this in spite of the fact that the Atty. General's office had warned the New York office to take care that the cases should not be outlawed—and after the false character of the reports had been pointed out to the Assistant Atty. Gen'l. and had obtained a report by long-distance telephone to the U. S. Atty.'s office in New York that in fact the crimes had been committed and that prima facie evidence existed to warrant the finding of indictments and convictions could be expected.

For your information I should point out that in one case the same sort of crimes, based on the same evidence had been perpetrated against the State of New York and against the U. S. Government.

As Mr. Marshall had been a member of the firm of O'Gorman, Battle & Co. when the proceedings first started obviously Mr. Marshall could not well prosecute in the name of the U. S. when in fact only a few weeks before he took office he and his firm had been actively engaged in defending the accused—besides, O'Gorman & Battle are still defending them in both civil and criminal actions in State and Federal courts.

The Atty. Gen'l. appointed—as special deputy to the Atty. Gen'l. to look after the cases—an under-official in Mr. Marshall's office. I can produce conclusive evidence of the fact that not only did this special deputy fail to do his duty and made false reports (misstatements and omissions), but further that he was influenced and prevented from doing his honest duty by his superior, Mr. Marshall.

My cases have, of course, nothing to do with the European war and are entirely of a different character. I will mention now only one concrete example:

On Dec. 4th, 1914, Alpheus H. Favern was indicted for perjury by the New York County Grand Jury, for making false evidence to the *State* gov't, the principal proof being affidavits, also false but contradictory in part made to the U. S. Gov't. The two contradictory affidavits constituting presumptive evidence of guilt under the N. Y. Code. O'Gorman, Battle & Co. worked nearly a year to upset the indictments but failed, it being a strong, sound case with overwhelming evidence of guilt.

All that evidence was supplied to the U. S. Atty., and an indictment should and would have been found by the U. S. Grand Jury were it not for the misconduct of the U. S. Atty. The evidence is principally documentary, the grand jury minutes will support my charges. Assistant Atty. Gen'l. Wallace particularly warned the New York Atty. to see that the cases should not be defeated by the statute of limitations. But so strong is the New York group that they defied Washington, and justice was defeated as a result of this conspiracy practically engineered by the New York U. S. Atty.

I can refer you to evidence and correspondence in Washington, but time will not permit to-night.

I inclose two printed letters now forming part of the exhibits in the Federal action, in which O'Gorman, Battle & Co. appear for Favern and others.

I have marked a few points—see page 4 of Exhibit A 96.

I will try and put the evidence in shape for you in a day or two. I am prepared to produce and testify before any Congressional committee.

When acknowledging this letter would you kindly have your secretary send me a copy of this letter, as I require it for my file and have no time to make one now.

Let me know if you are interested and desire the further evidence and notes from me. I am,

Very truly, yours,

CHARLES BRIGHT.

Address: No. 18 West 25th Street, New York City.

Mr. GARD. I think the important feature involved in this matter, as has been suggested, is that the House is very jealous of the privileges of its Members, and we want to know if the freedom of speech of Members of this House has been invaded by the district attorney, and in order to find that out, we should like to have your statement, Mr. Buchanan, and I think we should like also for you and your attorney to give the names of witnesses whom we can call to throw light on those questions. Those are things you and your attorney will readily see we should have.

Mr. BUCHANAN. First, I might state that I have had strong convictions in regard to peace being absolutely necessary in order to make progress along the road of the brotherhood of man, which has been the fundamental principle of the trades union movement, you might say, practically ever since we have been in the trades union movement, which covers 20 years or more.

When this war broke out in Europe, I think I said to some of my associates I should be glad to sacrifice some years of my life if I could bring it to a proper and early termination, because it was something that appeared to me like a thunderbolt, coming out of a clear sky. I made statements in the House of Congress that the labor people would have something to say before they were plunged into war, and I believe I referred to labor conventions in France, as having been given credit for preventing war between Germany and France over the Morocco contention. I think that my position on that subject is well known. I have worked, since I have been a Member of Congress, to have the Government manufacture its own munitions of war, and war supplies, and I think with some success. I have urged the manufacture of powder at Indian Head, effecting a great saving to the Government.

Mr. NELSON. You were on the Naval Affairs Committee?

Mr. BUCHANAN. Yes, sir.

Mr. NELSON. And as such a Member you had pronounced views on the question of armor plants?

Mr. BUCHANAN. Yes, sir.

Mr. NELSON. I mean, have you expressed yourself?

Mr. BUCHANAN. Yes, sir.

Mr. NELSON. And often expressed yourself against the program of an increase of the Navy and Army, etc.

Mr. BUCHANAN. The records of Congress will show that.

Mr. NELSON. You might state that.

Mr. BUCHANAN. I exerted my best influence and efforts toward opposing the construction of battleships. I stated that they were obsolete and inoperative as against submarines, aircraft, and other destructive weapons. I believe the first effort I made on the floor in Congress was to suggest an amendment to have the powder mill at Indian Head extended, so as to manufacture our own powder, which I figured out would be a saving to the Government of about \$250,000.

I was also active in securing an amendment in the Naval Affairs Committee in the Navy appropriation bill to have our establishments under the Navy Department run at full capacity before any part of the money appropriated, or authorized, should be spent for the purchase of materials outside of the Navy Department.

Now, that is only briefly stated, with a view of showing that I have undergone no change. In regard to Labor's National Peace Council, the first I knew of the organization was in Chicago. I was not in Chicago at the time. I forget just where I was. It seems to me I was in the East, and my labor friends wired me and asked if I would become the president of Labor's Peace Council of Chicago, but I wired back that if it was the wish of the Chicago labor organizations, I would accept. So, accordingly, I was made president labor's Peace Council of Chicago. June 18 meeting held in executive board rooms of Chicago Federation of Labor.

Mr. NELSON. That was in 1915?

Mr. BUCHANAN. Yes, sir; and the next thing I recall is that we had a meeting and organized Labor's National Peace Council. We had a branch then in New York and one in Chicago. I do not remember now whether there were any local branches or not, but these two councils had decided to form a national council, and at the request of some of my trade-union friends I reluctantly became

president. The newspapers had it that I organized the National Peace Council, which is just about as accurate as the statements which usually appear in the newspapers.

Mr. NELSON. Have you any programs and letters?

Mr. BUCHANAN. I think the grand jury got all the records. This pamphlet, of which I left a sufficient number for all the members of the committee, is a printed record of the meetings held and the purpose, etc., of the organization.

EXHIBIT No. 22, FEBRUARY 4, 1916.

LABOR'S NATIONAL PEACE COUNCIL—AN INJURY TO ONE IS THE CONCERN OF ALL— HOW AND WHY IT WAS ESTABLISHED—THE REASON.

Its success or failure is bound to determine the progress and prosperity of you and yours.

Don't carelessly lay it aside, but read it. Each page carries a message you can not afford to ignore.

Read and reflect, then act.

LABOR'S NATIONAL PEACE COUNCIL—THE REASONS FOR ITS EXISTENCE TOGETHER WITH THE LABORS THAT DEMAND ITS ATTENTION.

War constitutes the seed time of human misery, and the harvest time of inhuman greed.

As proof of the former, one needs but glance at the columns of the daily press, which, in spite of the active censorship at work, is replete with soul sickening accounts of the unspeakable horrors that are incidental to a condition of murderous strife. Lust, loot, and license, the triple evils which have for ages been regarded as the special privileges of warriors, seem, in spite of our boasted advancement in civilization, to still be an inseparable condition of war, if the blood-soaked pages of European history now being written by flame and sword are to be believed.

THE SEED TIME OF HUMAN MISERY.

The appalling sacrifice of human lives, totaling into the millions, and still continuing with unabated force, while stupendous in character, deals only with the dead whom the grim reaper has put beyond the power to feel further suffering; the crippled remnants of what once were men in the full vigor and pride of mental and physical strength, and the army of children, whose pinched faces and puny forms are the direct result of war, constitute a most pathetic appeal for peace.

The anguished groans of outraged womanhood, instructed by a monstrously selfish government to lay aside all the refinements of their nature and submit themselves to the embrace of the soldiers ordered to the front, so that the governmental edict, "breed before you die," might be effectually consummated, coupled with the heart-rending cries of bereaved mothers, wives, and orphans doomed to suffer privation and want in their most revolting and hideous forms, is a spectacle so pitiful that it robs war of all the attributes of patriotism, honor, and glory its advocates continually strive to invest it with.

Who have and must do practically all the fighting that is done? Who compose the forces in the rifle pits and trenches? The privileged 5 per cent of the warring nations, or the 95 per cent constituting the toilers of such country?

Who are those who profit by war—those, who at the close of a war return to find homes in ruins, family dispersed, fields despoiled, stock stolen, credit destroyed, physical health impaired, victims of disease contracted in their country's service, or crippled, to the extent of being a burden instead of a help; or are they the hypocritical merchant princes and captains of industry who stayed at home, living in luxurious ease and comfort, preaching public patriotism while practicing private graft and then decline to employ or support those who fought the fight, because of their physical incapacity?

Who pays the enormous war debts? Largely representing exorbitant profits exacted by modern business Shylocks, eager to commercialize their country's needs and enrich themselves at the public's expense. Is it the criminal rich or the conscientious, wealth-producing citizen?

The answer to these questions can be found in the pages of the world's history and in the experience-purchased knowledge possessed by every reader, which must con-

vince even the most skeptical that war, be it great or small, is, has, and ever will be, the seed time of human misery.

THE HARVEST TIME OF INHUMAN GREED.

It is well said that those who control the credit and money of this country control the business of the country. Since rich men do not keep much money in the banks, but use bank credit, which passes the same as money, the natural question arises: Where does the money come from upon which the credit given the business world is based? That money represents the meager profits of the small business man, the comfort-denying savings of the working people, the petty household economies of the nation's wives and mothers, the poor widow's hoarded mite, and the pennies of the country's children, who patronizing a bank, to insure the safe-keeping of their money, put the sum total of their combined wealth in the control of the bankers with whom they deposit it.

The control of all this money by a few men is a dangerous thing. If all of these men are honest, impartial, wise, and prudent, then all is well and good. But if a part of these men prove greedy, dishonest, and imprudent, then the control becomes a public evil, for these bankers who are greedy, dishonest, and imprudent can and do create financial panics that result in the demoralization of business which may cause bank failures and business failures, men are thrown out of work, wages are reduced, and the farmers can not dispose of their products. The people who have deposited their money in the banks can not draw it out, and they are helpless until conditions are relieved. When money is tight, it is the business man, the farmer, and the people at large who must suffer. But the banker profits, for he secures higher rates for money and is enabled to buy securities at low prices.

War, with its insistent demands for cash in unlimited quantities, is the time when exorbitant profits are exacted to the smallest fraction of a penny, not only by the smug-faced financial pirates, known as bankers, but their equally merciless brothers in crime, the commercial buccaneers that deal in war supplies and equipment.

Does such a condition serve as tenable basis for the statement that war is the harvest time of inhuman greed?

THE PEOPLE'S PART IN WAR.

If the constant press plea for financial contributions to relieve the distress of the European masses, without food, clothes, or shelter are true, war, in that battle-scarred portion of the earth, does not mean either progress or prosperity for the people; and if the army of jobless American toilers is any indication, the boasted prosperity of America is confined to big business alone and is not permitted to filter through to the common people.

The only conclusion an intelligent mind can arrive at, after an exhaustive study of all that the most ardent champion of militarism and war can offer to support the ancient theory of might makes right, is that peace is essential to progress and prosperity; while war means nothing else but waste, worry, and woe.

As labor represents that 95 per cent of the people which suffer most through war, it is but natural that it constitute that element of human society most directly and vitally concerned in the preservation of peace, and its efforts in that direction, though ridiculed by some and derided by others, will never and can never be construed, by the fair-minded, as the expression of moral or physical cowardice that shrinks from war's sacrifices through lack of personal courage.

REPORT OF AMERICA'S FRATERNAL DELEGATES.

In the year 1913, long before the murderous European slaughter had been inaugurated, Messrs. C. L. Baine and Louis Kemper, as the fraternal delegates representing the American Federation of Labor to the British Trades Union Congress, on their return reported in part, to the organized workers of America, as follows:

"One of the strongest impressions made upon the minds of your delegates while attending the congress was the prevailing sentiment against international wars. There seemed to be a general sentiment that trade-unionists would not be pawns in the game of international war as played by political or commercial interests for financial or territorial aggrandizement, and that the trade-unionists of the world, bound together in bonds of fraternity, strengthened by the annual visitation of delegates from each country to the others, would enter their most emphatic protest against being rendered as food for cannon and other implements of war at the behest of their despoilers. To our minds the international trade-union movement has become already the greatest

guaranty for international peace, and will be recognized as such in the near future by all who are interested in preserving the human race from the ravages of warfare."

As evidence that the sentiment prevalent in England, was not confined to Great Britain alone, we need but turn to the report rendered to the American Federation of Labor by George W. Perkins, president International Cigar Makers' Union, who served as its fraternal delegate to the world's congress of trades-unions held at Zurich, Switzerland, September, 1913, at which the following countries were represented: England, France, Belgium, Holland, Denmark, Sweden, Norway, Finland, Germany, Austria, Bosnia-Herzegovina, Hungary, Croatia, Switzerland, Italy, Spain, and the United States.

In this report the conclusions of Delegate Perkins were presented in part as follows:

"The trade-union movement of Europe has had a greater influence in preventing the wars between civilized nations than all other influences combined. During the Morocco squabble, and when England, France, and Germany stood ready to grapple in the death struggle, stood on the verge of war with all its horror, misery, and privation, let it be said to the everlasting credit of the trade unionists of France that they made it clearly understood and known to the Government that they were opposed to a war of conquest. The French trade unionists immediately communicated with England and Germany, and while it was deemed not advisable that a conference be held to discuss war and its prevention, it was diplomatically decided that the delegation of French trade unionists should visit Germany and England on a study tour of social and economic questions. About 70 trade unionists went to each country. They spent several days in Germany, in which time both the German and French leaders quietly talked against war. This all culminated in a mass meeting held in Berlin and which over 30,000 people attended. Outwardly the meeting was to talk over social and economic questions, but inwardly the working people at least knew it was to be a protest against a war with France over the Morocco situation.

"This substantial demonstration immediately had its effect upon Germany. The French delegates immediately hurried home where similar tactics were employed. Mass meetings of protest against war with Germany or England over the Morocco question were held all over France, and resolutions of protest against the war were unanimously adopted. The same influences were at work in England, and I assert without fear of successful contradiction, that the trade-union movement of these three countries actually prevented what would have been one of the bloodiest and costliest wars, had it taken place, that has ever occurred in Europe. The trade-union movement, if nothing else, has taught the workers of all the countries that wars of conquest bring home to the workers who are fortunate to live through the war, nothing but misery, degradation, and poverty, and after all it is the greatest agency for peace the world possesses.

"It has dispelled the hatred that formerly existed between the workingmen of different countries, and has brought about in its stead a feeling of brotherly love and kindly consideration which augurs well for the more speedy development of the international trade-union movement.

GEO. W. PERKINS' PROPHECY.

"Personally I am of the opinion that standing armies of continental Europe are maintained not so much for the purpose of repelling foreign invasion, but rather to hold in subjection the workers and to repel any uprising or revolution which the intolerable conditions might inspire in them. Continental Europe as it exists today is standing on a volcano, glossed over with a thin veneer of flowers, song, music, art, old buildings, and traditions; remove these, and there might be an eruption that would shake the civilized world to its very foundations. Where will it end? The answer, reflected on the banner of the advancing hosts of trade-unionists, is that as the trade-union movement develops, it will bring order out of chaos. It will restore, in so far as it is possible, conditions to a more equitable level, and bring into the lives of the workers of these otherwise beautiful countries some sunlight, some happiness, and the opportunity and ability to enjoy life as befits human beings and advancing civilization."

Not many months after the submission of the Perkins' report, the suggested volcanic eruption burst forth with a fury and devastating effect, that has grown brain staggering in its immensity, and prompted the executive council of the American Federation of Labor in its report to the thirty-fourth annual convention held at Philadelphia, Pa., from 9th to 21st of November, 1914, to make a statement on international war and peace, of which the following are extracts:

DECLARATION OF AMERICAN FEDERATION OF LABOR.

"A stupendous conflict is shaking to its foundations the structures of world civilization. The normal relations of commerce and interchange have been disrupted. In Europe values placed upon the interests and purposes of human activity have been reversed.

"Before the war, the thought and effort of civilization were centered upon the development and the glorification of human life. One life was counted of infinite value. The end of progress, development, and work was that each individual might have life more abundantly. Indefatigable minds have forced understanding of the unknown that human life might be protected and conserved, and that all the forces and resources of the universe might be put under the control of the will of man. Hearts that were great with love and understanding of the yearnings and aspirations that lie in every life sought to bring beauty and joy into the common life of all. Over all the world was felt the stir of that great ideal—the fellowship of men.

"But since the cataclysm that brought war between nations, all the skill, the inventions, the knowledge of civilization have been perverted to purposes of destruction of human life and devastation of the products of human labor. Men are treated as only military pawns to obey implicitly the command of the general. They are targets for the most perfect guns and destructive ammunition human minds have invented. Things are valued for their life-destroying power. Guns are worth more than men. The value of military position is estimated in terms of human lives. The life and the property of the individual are ruthlessly sacrificed to ends of war.

"The cruelty and butchery of the war are appalling. The waste and the suffering in its wake are heart-rending. The blackened homes, the ruined lives, the long procession of homeless, seeking food and shelter from the hands of strangers—all these are the products of war. There are nations that are sending the flower of their manhood to meet almost certain death. The strong, the healthy, the fit leave the work of the nation to the old and the very young, to women and to children. For centuries the nations will suffer from this mad stupid waste—for the fathers of the next generations will be the unfit physically and mentally, those whose vision or hearing is imperfect, those of undersize and subnormal development.

"Yet this war with its terrific toll of human lives is the product of artificial conditions and policies and is repugnant to the thought and political progress of the age. The big things of life and civilization are international. But so far we have made little effort or progress in providing agencies for organizing international relations to maintain peace and justice. We realize intellectually that peace and justice should obtain among nations, but we have not yet instituted permanent means adequate to make that conviction a reality.

"A time when we are confronted by the effects and the appalling realities of a most terrible war is a peculiarly appropriate opportunity for the people to think out methods and agencies for the maintenance of peace. The terrible consequences of war which are forced upon us everywhere envelope peace plans with an unusual atmosphere of practicability and urgency. The appeal for peace is getting very close to the American people, the only great nation not directly involved in the war and consequently the nation that holds in its hands the power of mediation and use of its good offices. This opportunity constitutes a duty if we really believe in the fellowship of men and the sacredness of human life.

"For years peace societies and organizations have presented arguments for peace, have adopted peace resolutions, and have declared for various international sentiments, but they have made little effort to give these visions reality in the organization of society and the relations among nations. But the war has shown that war can not be stopped by paper resolutions and that war can not put an end to itself. Wars will cease only when society is convinced that human life is really sacred and when society establishes agencies, international as well as national, for protecting lives.

"We profess to believe that all men have inalienable rights to life, liberty and the pursuit of happiness, but we do not see to it that these rights are secured to each individual. Industry is conducted upon the supposition that human life is cheap. Profits are held to be the ultimate end of business. Therefore business managers must get profits and in furthering the getting, sacrifice the workers in the process. Employers cold-bloodedly calculate in money terms the relative expensiveness of machinery and workers; of the eight-hour day and the twelve-hour day; of child labor and adult labor; of compensation for loss of life and limb and preventing measures. In coal mines, steel works and in transportation, human life is risked and sacrificed with cynical disregard. We profess to believe in democratic freedom, yet dominion of power so ruthlessly prevails in industry.

"Consider the statistics of industrial accidents, injuries, and deaths. In harmony with this waste of human life in industry is waste of human life in a crude effort to decide political issues on the battlefield.

"When we realize the wonderful possibilities in permitting each individual to develop his abilities and do his work with a sound mind and body, then shall we appreciate the sanctity of living and we shall not dare to hamper development in any way. When this ideal becomes a part of our daily thinking and doing and working then fellow beings will not be robbed of that which no one has the power to restore—life. The establishment of this ideal of the sacredness of life is a problem of education. It must be drilled into people, made a part of their very being, and must saturate every mental fiber.

It is not only that we are shocked at the waste of human life, but that we have not yet adjusted ourselves to this particular kind of waste—waste in war. We must realize the awful responsibility for the loss of human life opportunity with clearness and with understanding of the meaning of that waste that nothing will prevent our putting an end to all preventable waste. When conviction is sufficiently compelling practical results will follow. Education and agitation are necessary to create that conviction. Those who wish to abolish war must lose no opportunity to implant the ethics of humanity, to make the sacredness of human life a part of the thought and action of the nations. The power to declare war must be put in the hands of the people or their chosen representatives.

"In addition to establishing a sentiment and a conviction for peace there must be agencies established for the maintenance of peaceful relations among nations and for dealing with international issues. Militarism and competitive armament must be abolished and tribunals for awarding justice and agencies for enforcing determinations must be instituted. International interests and issues exist. Political institutions should be established, corresponding to political developments.

"Those most interested should lead in the demands for world federation and the rule of reason between nations. The working people of all lands bear the brunt of war. They do the fighting, pay the war taxes, suffer most from the disorganization of industry and commerce which results from war.

"The national labor movement can promote the cause of international peace by two complementary lines of action; by creating and stimulating with their own nations a public sentiment that will not tolerate waste of life, and by establishing international relations, understanding, and agencies that will constitute an insuperable barrier to policies of force and destruction. With humanization, education, cultivation, the establishment of the rule of reason, occasions for wars and wars themselves will cease. The working people, the masses of the world's population, can end wars if they will but have the independence to think and to give their convictions reality by daring to do.

"This convention should, aye, must, adopt some constructive suggestion and take some tangible action upon this world problem which so intimately affects the workers of all countries."

ORGANIZED LABOR'S ATTITUDE AND RESULTS.

Notwithstanding the American Federation of Labor's declaration, that "the war can not be stopped by paper resolutions, nor can it put an end to itself," the organized workers of America continued to express their belief that war was not only horrible, but unnecessary, unintelligent and avoidable, through the medium of beautiful phrased resolutions, that promised much, but accomplished little of real merit. With what result?

The covetous eyes of the commercial ghouls, fiendishly gloating over the nefarious profits, represented by the corpse strewn battle fields of Europe, turned with hellish purpose toward the United States of America, and finding themselves unchallenged by any positive evidence of active, organized opposition, grew bold in their satanic design to embroil the land of the free and the home of the brave in the European quarrel and force its people to add their quota toward increasing the blood-stained fortunes of the patriotic (?) international war mongers.

So self-satisfied was this malignant tribe of dollar lovers, regarding the supposed fatuous character of the American people, that they exercised no care to conceal their hideous intent, but brazenly invoked aid in the name of patriotism and all the virtues that the Star Spangled Banner of the United States represents.

THE FIRST PRACTICAL STEP.

Recognizing the need for immediate action to circumvent the avowed purpose of these Judas Iscariots, a group of trades unionists of Chicago, inspired by the suggestion of the American Federation of Labor's Executive Council in 1914, agreed among

themselves to act as the pioneers that would blaze a path through the tangled brush and timber of national apathy and with this thought in mind, called a conference of labor representatives in the Executive Board Rooms of the Chicago Federation of Labor, and after a series of meetings brought into being an organization, with the significant title, "Labor's Peace Council of Chicago," which body at its session held on June 18, 1915, adopted the following self-explanatory program:

"Resolved, That labor's peace council of Chicago, through official channels, communicate with all labor organizations that have placed themselves on record as favoring peace at home and abroad, and urge upon them to select and credential delegates to attend the Peace Conference of Labor, to be held under the direction of the Honorable Frank Buchanan, president of Labor's Peace Council of Chicago, in the city of Washington, D. C., on Tuesday, June 22, 1915, for the purpose of considering the best method of procedure, to insure the attainment of organized labor's high ideals and peace sentiments."

WASHINGTON, D. C. PEACE CONGRESS.

Pursuant to this call, Washington, D. C., on June 22, 1915, witnessed a gathering of labor representatives from various metropolitan centers, who further carried on the work for peace by the adoption of the following resolutions:

"Whereas the purpose of this call, for a peace congress, in labor's name, is to crystalize the prevailing sentiment for peace, voiced by the organized toilers of America through resolutions, into practical action that will not only effectually circumvent the hellish designs of the dollar-crazed interests, that for the sake of financial gain, are striving to force the United States into the vortex of war's crimson flood of human gore, but will also serve as the long prayed for excuse, that Europe's organized workers have been straining their ears to hear from American shores, and that will enable them to demand, in the name of common humanity, a cessation of hostilities, in order that calm reason may prevail and common sense sit in judgment and end a cruel conflict that has already destroyed the very flower of Europe's army of labor and is daily claiming hundreds of thousands more, while piling up a war indebtedness, that will be left as a spirit breaking heritage for the maimed and disease ridden human remnants to pay through further sacrifices and untold future misery, and

"Whereas the American Federation of Labor and most of the Labor Federations, assemblies or councils in the large metropolitan centers have adopted strong resolutions not only condemning war, and, in forcible language, voicing a most strenuous protest against the insidious efforts being made to embroil the United States of America in the European conflict, and in the same emphatic manner also courageously and in the interest of humanity favoring a peace universal, and

"Whereas the American Federation of Labor and its various departmental branches, as well as the labor federations, assemblies, or councils, in the metropolitan centers, are so overburdened with work dealing with various problems of direct and vital interest to their membership, that in spite of their inclination they can not find time to devote to the detailed labor essential to properly arousing the conscience of labor, and urge it to make its presence felt in the preservation of American neutrality and the inauguration of peace universal, and

"Whereas it therefore devolves upon labor's representatives assembled here to prove the courage of their convictions by the establishment of a national institution having for its sole aim and object the carrying into effect, through practical action, of the essence of labor's oft reiterated declaration for peace both at home and abroad, and to effect such purpose, be it

"Resolved by the representatives of labor in peace congress assembled in the city of Washington, D. C., That an organization be, and is hereby, established, to be known as Labor's National Peace Council, having for its purpose the establishment and maintenance of peace universal by all honorable means; and be it further

"Resolved, That the officers of Labor's National Peace Council shall consist of a president, six vice presidents, a treasurer, a secretary, and a sergeant at arms, same to be elected immediately, upon the adoption of this resolution, and such officers-elect shall act in their official capacity in conducting the further business of Labor's National Peace Council."

In conformity with the provisions of the foregoing resolution the following officers were elected to direct the further activities of Labor's National Peace Council:

Congressman Frank Buchanan, former international president Bridge and Structural Iron Workers, was elected president of Labor's National Peace Council.

First Vice President, Milton Snellings, Washington, D. C., of Stationary and Steam Operating Engineers' International Union.

Second Vice President, William F. Kramer, Chicago, general secretary-treasurer International Brotherhood of Blacksmiths and Helpers.

Third Vice President, Rudolph Modest, New York, Amalgamated Meat Cutters of America.

Fourth Vice President, Jacob C. Taylor, East Orange, N. J., secretary-treasurer, Federated Central Body of the States of New York and New Jersey.

Secretary, L. P. Straube, Chicago, Ill., business manager Commercial Portrait Artists, A. F. of L.

Treasurer, Ernest Bohm, New York City, secretary Central Federated Union.

Sergeant at arms, Fred Lohn, Chicago, Ill., Leather Workers' International Union.

General counsel, Ex-Congressman H. Robert Fowler, Harrisburg, Ill.

LABOR'S NATIONAL PEACE COUNCIL PROGRAM.

In its further deliberations Labor's National Peace Council was guided by the attitude assumed by the American Federation of Labor at its Philadelphia convention in 1914, through the adoption of resolution No. 159, introduced by Delegate Paul Scharrenberg, of the California State Federation of Labor, which read as follows:

"Whereas one of the main causes for the maintenance of large military and naval establishments, and which is a standing menace to peace between nations, is to be found in the fact that patent rights on and the manufacture of arms, munitions, and implements of war are in the hands of international combinations of capitalists, who sell their products indiscriminately to the Governments of the world and promote the sale of such products by arousing and encouraging feelings of national prejudice and jealousy and by employing the press and the officers of the Army and Navy to produce periodical war scares in different countries; and

"Whereas this menace to international peace can be eliminated and the ultimate disarmament promoted by having the Government manufacture its own equipment and articles used for war purposes; therefore, be it

"*Resolved by the American Federation of Labor, in Thirty-fourth Annual Convention assembled*, That all patent rights for arms, munitions, and other equipment to be used for war purposes should be acquired by the Government, and all such equipment should be manufactured in Government establishments."

CONGRESSMAN TAVENNER'S DISCLOSURES.

The absolute necessity for action, as outlined in the foregoing resolution, being conclusively demonstrated by the soul-stirring remarks of the honorable Clyde H. Tavenner, Congressman from Illinois, delivered in the House of Representatives on February 15, 1915, when he said in part, as follows:

"Is there no way whatever, it may be asked, by which the people can protect themselves from the greed of the war trust magnates? Yes; just one way. That is by the Government taking the profit out of war and preparation for war by manufacturing all of its own munitions, armor, cannon, and battleships. Both Washington and Lincoln advocated the nationalization of the manufacture of war munitions as sound public policy.

"If the Government will manufacture all of its own war materials, millions of dollars will be saved annually to the taxpayers as a result of the already demonstrated ability of Uncle Sam to manufacture at a cost much below the prices of the war trust, as I shall show. Government manufacture will mean that the workmen who perform the labor of actually making the munitions will receive higher wages and better working conditions than the employees of the ring of private contractors receive, as these firms number among them the most bitter enemies of organized labor in the United States, working 51 per cent of their employees 12 hours a day, according to a report of the United States Bureau of Labor made just after an investigation in 1910.

"Fortunate indeed would it be for this Nation to-day if the Government had a monopoly of the manufacture of all munitions of war. It is not the average American, the man who will be required to do the fighting and pay the bills if we become embroiled in the European conflict, who is jeopardizing our peace. The average American is remaining at home, attending to his business. It is the ring of war-trafficking private arms and ammunition firms who are endangering the peace and welfare of 100,000,000 people in order that they may satisfy their greed for profit. If we go to war, it will not be on account of anything the average American has done, but because as a Nation we have neglected to safeguard our peace by taking the profit out of war and preparation for war.

WHO THE WAR TRADERS ARE.

"Because I believe it is my duty to do so, I desire now to take the responsibility of directing the attention of the American people to the fact that their money appropriated for the Army and Navy is being wasted by the millions, and to take the responsibility of identifying the war traffickers, so that the tax-payers may know where the millions upon millions of their money that has been dumped into the bottomless pit of militarism have been going, are going, and will continue to go unless public opinion shall arise in its might and demand that further waste of public funds shall cease.

"To begin with, who and what is the armor ring, if there really is such an animal? Is the term 'armor ring' a mere figure of speech, something invisible, or is it possible definitely to place our finger upon it. Answer: It is possible.

"The armor ring is the Bethlehem Steel Co., the Midvale Steel Co., and the Carnegie Steel Co. These three firms, exclusive of their subsidiary war-trafficking auxiliaries, have drawn down since 1887 from the Navy Department alone for the single item of armor plate contracts aggregating \$95,628,912, divided as follows: Bethlehem, \$42,321,237; Carnegie, \$32,954,377; Midvale, \$20,353,298.

"I have just stated that the armor ring is composed of the Bethlehem, Midvale, and Carnegie companies. Remember the names.

"Now, the armament ring is composed of Midvale, Bethlehem, and Carnegie. Ammunition ring, Carnegie, Midvale, and Bethlehem. We will add to the ammunition ring, for good measure, the Du Pont Powder Trust, which has no competitors in the sale of smokeless power to the Government for reasons that will appear most remarkable when explained. The Powder Trust has obtained contracts aggregating about \$25,000,000 since 1905.

SOME DEFINITE INFORMATION AS TO THE WASTING OF PUBLIC FUNDS.

"Why has the War Department been paying the ring \$17.50 for a 3.8 inch common shrapnel when it can manufacture and is manufacturing the identical article at Frankford for \$7.94? Seventeen dollars is more than twice \$7.94. The Government could manufacture two shrapnels for the price it has been paying the private manufacturers for one and have \$1.62 remaining to the people's credit on each transaction. Is it any wonder we do not have as much ammunition as we should have for the money that has been expended? It is the public funds that are being spent here, and the people have a right to have these questions answered.

"We are manufacturing a 31-second combination fuse in the Government arsenal for \$2.92 for which we have been paying the ring \$7.

"These illustrations are not exceptional, as I will endeavor to show by the fact that on a contract given to the Frankford Arsenal for ammunition valued at \$1,900,064 we are saving \$979,840; or, in other words, we are saving approximately \$1,000,000 on a \$2,000,000 order as compared with what it would have cost had that contract been awarded the ammunition ring.

"In a recent speech before Congress President Wilson stated that, 'like good stewards, we should so account for every dollar of our appropriations as to make it perfectly evident what it was spent for and in what way it was spent.' Surely no such thought was in the minds of the Army and Navy officials who have been doing the purchasing for those departments.

"It would require several volumes to cover all the transactions deserving publicity concerning armor. Let it be sufficient, in passing, to say that the Government purchase of armor has been a scandal from start to finish. The conduct of the armor ring in dealing with the Government averages throughout at least 80 per cent rotten.

METHODS OF THE WAR TRAFFICKERS IN KEEPING UP BUSINESS.

"There are tricks in all trades. If the people of the several powers can be incited to mutual distrust, suspicion, and hatred, for instance, it means increased dividends for the stockholders of the war traffickers in each country.

"The several leading powers aim to increase their naval strength in the same proportion. If one of the powers can be induced to take on an additional superdreadnaught, it is used as an argument as to why the other leading powers should do the same. It works as an endless chain, with the war burden ever and ever increasing on the backs of the taxpayers of the world.

"If a new design can be worked out, that, too, means more grist for the shipbuilders. It calls for the speedy "scrapping" of the vessels already on hand as "obsolete," "scrapping" meaning throwing on the scrap-heap as old junk. So the life of the battleship is ever lessening.

"Another trick in the trade of the war traders which is obviously profitable, otherwise it would not be continued, is the hiring of retired Army and Navy officials and ex-Members of Congress by the powder, armor, and shipbuilding concerns. These ex-officials know the inner workings of the military branches of the Government, know the personnel in an intimate way, and by private conversation, by correspondence, and in various ways are in a position to obtain much useful information. They know how to go about things for results. Through these ex-officials the War Trust has become thoroughly at home in Washington.

"There seems to be no limit to the extremes to which the war traders are willing to go for business.

INTERESTING FACTS WORTH KNOWING.

"Although scarcely believable, it is the proven fact that the British and German War Trusts many years ago actually set about to represent to their respective home Governments that their rivals were planning to build and were building great armadas of giant fighting craft, which have since been proven absolutely to have been figments of the imagination pure and simple. The same character of campaigns have been going on between France and Germany, between the countries in the triple alliance and the triple entente, and it is yet to be established whether the United States of America has not also been the victim of a similar brand of commercialism, in which patriotism is the means and profit the end.

"Misrepresentation as to the building program of Great Britain and Germany were carried on to such an extent that the papers became full of it and the suspicion of the people toward each other grew and grew. It was inevitable that there could be but one end to such proceedings, and that end was war.

"Specific information, replete with details, is available to show just how the work was carried on."

FURTHER JUSTIFICATION FOR RESOLUTION ADOPTED.

In addition to the reasons assigned by Congressman Tavenner that justify Government ownership, control, and manufacture of all war munitions, supplies and equipment, investigation discloses that under International law the assumption by the Government of complete ownership, control, and manufacture of all armaments, war supplies and equipment would lessen the chances of a repetition of the present deplorable European dilemma, for it would prevent the cheap, narrow-gauged, and small-souled dollar patriot from reaping a golden harvest at the expense of his country's peace, while the Government itself could not supply any of the belligerents with war material, since such action would constitute a declaration of alliance with the nation so favored and signify a declaration of war against the country with which such nation was engaged.

ATTITUDE OF HIRELING PRESS.

As was to be expected, a prostituted public press rushed to the defense of the money grabbers threatened by such action, fondly hoping through a frantic appeal to prejudice and a system of puerile reasoning to avert the dreaded calamity of having their master's snouts forcibly dragged from the juicy graft, to be found in the trough of governmental contracts, and by such fancy word juggling as their statement, "Clever phrases are a dangerous substitute for sober thought." The present yammer about "take profit out of war" is a case in point, which they use as the introduction for a diatribe against governmental monopoly of war munitions and supplies and seek to prove the pretended innocence of war traders and war makers by saying, "We must not let phrases take the place of facts. The safety of the United States demands that we maintain the right of private individuals or corporations to manufacture and trade in arms and munitions of war.

REPLY TO PRESS CHARGES.

In response to this call for facts we again take the liberty of borrowing from the convincing statement of Congressman Tavenner, in the House of Representatives, when he said:

"Army and Navy officers generally are opposed to complete Government manufacture of munitions of war, taking the position that it is the part of wisdom for the Government to encourage private manufacturers to operate plants so that they may be available in time of war. Experience has shown, however, that instead of patriotically coming to the relief of the Government in time of war, the war traders take advantage of the necessities of the Government, which is at their mercy, and boost their prices. For instance, when war with Spain was imminent the armor manufacturers

practically issued an ultimatum to the Government that they would not manufacture a single piece of armor plate unless the Government should agree to pay them \$100 a ton more than the price fixed by Congress after an investigation as to a fair price. And it is also worthy of notice that their patriotism did not prevent them from selling armor to Russia for \$249 a ton, while they were asking their own Government \$616 a ton.

“ARMOR PLATE PATRIOTISM IS WORLD-WIDE.

“There appears to be no real competition between the armor manufacturers of the various countries. Once, in 1893, the American armor ring made a noise like competition, when it sold armor to Russia for \$249, while charging the United States \$616, and for a time great consternation prevailed in the ranks of the war trusts of the various nations.

“But during this period the armor manufacturers of the world met in Paris, and since then there has been little or no competition worthy of the name. The armor manufacturers asked themselves why they should cut each others' throats and why it would not be to their advantage to receive \$500 or \$600 a ton instead of \$200 or \$300.

“In the naval hearings for 1914, page 621, the present Secretary of the Navy, Josephus Daniels, used the following language in referring to an advertisement for bids for armor plate for the dreadnaught Pennsylvania:

“When we came to the armor we rejected all the bids, and were then absolutely in a situation from which it appeared there was no relief. Though you can not establish it in black and white, there is no doubt of an Armor Plate Trust all over the world. That is to say, the people abroad who make armor plate will not come here and submit bids, because they know if they do our manufacturers will go abroad and submit bids. They have divided the world, like Gaul, into three parts.

“For more definite evidence of the tremendous syndication and wide sympathies of armor-plate patriotism, an examination of the Harvey United Steel Co., of London, is instructive and entertaining.

POSITIVE EVIDENCE OF INTERNATIONAL COMBINE.

“The powder makers of the world, like the armor makers, have been in an international combine for years. Here are two paragraphs in the world agreement entered into in 1897, which agreement was used by the Government in its suit against the Du Pont trust:

“Whenever the American factories receive an inquiry for any Government other than their own, either directly or indirectly, they are to communicate with the European factories through the chairman appointed, as hereinafter set forth, and by that means to ascertain the price of which the European factories are quoting or have fixed, and they shall be bound not to quote or sell at any lower figure than the price at which the European factories are quoting or have fixed. Should the European factories receive an inquiry from the Government of the United States of North America or decide to quote for delivery for that Government, either directly or indirectly, they shall first in like manner ascertain the price quoted or fixed by the American factories and shall be bound not to quote or sell below that figure. * * *

“The American factories are to abstain from manufacturing, selling, or quoting, directly, or indirectly, in or for consumption in any of the European territory, and the Europeans are to abstain in like manner from manufacturing, selling, or quoting, directly or indirectly, in or for consumption in any of the countries of the American territory. With regard to the syndicated territory, neither party is to erect works there, except by a mutual understanding, and the trade there is to be carried on for joint account in the manner hereinafter defined.

STILL MORE ASTOUNDING FACTS.

“Nor is this the worst: The Du Ponts and the Government have always been in the habit of exchanging all secrets in the manufacture of powder. Government chemists and Government officers are continually experimenting to improve the quality of powder, and whenever they make a discovery of any character full information is furnished the Du Ponts.

“And the Du Ponts have been in an agreement with a German firm—the United Rheinisch Westphalian Gunpowder Mills—to keep it informed of all improvements in the processes of powder making.

“Here is the actual wording of the contract:

“Tenth. That any and every improvement upon said processes or either of them made by either of the parties hereto at any time hereafter shall forthwith be imparted to the other of the parties hereto.”

"And even this is not all. The Du Ponts agreed to keep the German concern informed at all times of all powder furnished to the United States Government, stating in detail its quality and characteristics, and even the quantity, making themselves, to all practical ends, paid informers of a foreign Government.

"Here is the exact language:

"Thirteenth. That the parties of the second part [the Du Ponts] will, as soon as possible, inform the party of the first part [the German concern] of each and every contract for brown powder or nitrate of ammonia powder received by the parties of the second part from the Government of the United States, or any other contracting party or parties, stating in detail quantity, price, time of delivery, and all of the requirements that the powder called for in such contract, has to fulfill."

"As the German Government maintains a strict supervision over German military manufacturing concerns, there can be little doubt but that the German Government knows of every pound of powder we purchased during the life of this agreement, its exact quality, and exactly the extent of our reserve supply."

RESOLUTION FOR IMMEDIATE RESULTS.

As an immediate and practical step toward harmony, Labor's National Peace Council deemed it both wise and expedient to adopt the following measure:

"RESOLVED: That Labor's National Peace Council recommend to the President of the United States, that the policy of President Washington in 1793, prohibiting the sale and shipment of munitions of war, be followed, by a proclamation prohibiting the sale and shipment to belligerent nations of munitions and instrumentalities of war, as well as of all materials used in the production and manufacture of the same, and be it further

"Resolved, That copies of this resolution be given to the President and Secretary of State as well as the Members of the Senate and House, and copies be given the Labor and public press for publication."

REASONS FOR FURTHER ACTION.

In the discussion which arose as to the best method of procedure to secure at least an armistice, the consensus of opinion was, that war in spite of all that can be said to the contrary, in its final analysis resolves itself into unacknowledged mistakes of the governments involved, and is never the unanimous desire of those who must offer their bodies as cannon food and suffer the tortures of the damned to vindicate views that are inconsistent with the people's desire for social improvement, health, wealth, and the general pursuit of happiness, the attaining of which are only possible through the maintenance of peace.

It was further learned that when the Central Federated Union of Greater New York and vicinity arranged its first demonstration in April, 1915, at Cooper Union, it was determined to cable the leading men in the labor movement in England, France, and Germany, suggesting that three representatives from this country should meet with their representatives in Holland and Switzerland, for the purpose of arousing labor all over the world in a peace movement to end the awful European slaughter. Kier Hardie replied by cable for the Independent Labor Party favoring the plan. France did not reply. The following letter, which is a copy, was received from Germany:

"INTERNATIONAL SECRETARY OF NATIONAL TRADE UNION CENTERS,

"Berlin, May 21, 1915.

"Mr. ERNEST BOHM,

"Central Federated Union, New York, U. S. A.

"DEAR SIR AND BROTHER: On the 18th of April I received your wireless, the following advice having been added by the Berlin Chief Telegraph Office:

"This telegram has been permitted to pass by wireless exceptionally. Under present conditions, however, it will not be possible of a reply or other private telegrams being sent to America the same way."

"Thus, to my great regret, it was impossible for me to give an immediate response to your telegram, for the cable existing previously between Germany and the United States has been cut since the first days of the war. I had your wire published in the whole of the German labor press at once, so as to inform our workers of the desire of their American fellow workers to bring about peace.

"It being impossible to let you have an immediate reply, I hesitated to write for I hoped to first be able to meet labor representatives of some of the European neutral nations with a view of ascertaining to what extent your mission might be expected to be a success and how it could be organized. Unfortunately my hopes were in vain. This compels me to reply to your wire on my own account, after a month has elapsed.

"Our fellow workers in the United States may be assured that the working classes of Germany are eagerly waiting for peace, for the termination of this bloody struggle of nations. If this desire is not expressed daily in our papers and meetings, then it is due to the fact that we are in an extremely peculiar and delicate position. The majority of the organized workers in Great Britain and in France maintain, according to what we learn from their own labor papers, that Germany must be smashed. I need not dwell here on the consequences the realization of such a desire would have for the future development of the international labor movement. All our efforts made with a view to coming to an understanding have failed. The representatives of the German Workers, on August 4, 1914, have stated as follows in the Reichstag:

"That as soon as the object of security has been achieved and the enemy is inclined toward peace, the war should be brought to an end by a peace which makes the friendship of the neighboring countries possible."

"This same statement has been repeated in the Reichstag on December 2, 1914, and on March 10, 1915, while a further manifesto in favor of peace has been published by the social democratic parties of Germany, Austria and Hungary on April 13, 1915. Unfortunately no similar pronouncement has come from our sister parties of the other two countries of Western Europe. It would indeed be a task worth while if the delegation the workers of the United States intend sending to Europe were to make an understanding possible.

"We are extremely thankful for all efforts the American workers may make in this direction and you may rest assured that any suggestion will be welcomed by the German workers. The desire for peace which fills all really progressive and civilized men in every country is sure to be realized if your efforts meet with similar response in the other belligerent countries.

"With best wishes to the cause of labor in all lands,

"Yours fraternally,

"(Signed) C. LEGIEN,

*"President German Federation of Trade-Unions
and International Federation of Trade-Unions."*

LABOR'S NATIONAL PEACE COUNCIL ACTS.

The logical sequence of these disclosures was the unanimous adoption of the following resolution:

"Whereas one of the chief objects of Labor's National Peace Council is the attainment of universal peace, and

"Whereas this desired aim can only be accomplished through the medium of co-operative action on the part of the neutral and belligerent Governments as well as the labor forces of the neutral and belligerent countries: Therefore be it

"Resolved, By Labor's National Peace Council, in special session assembled in the city of Washington, District of Columbia, that through its officers, it communicate with the neutral European Governments as well as the belligerent Governments involved in the conflict, and also the organized labor forces in both neutral and belligerent countries, urging them to formulate a request for the cessation of hostilities so as to permit the reestablishment of reason and judgment, thereby ending a barbarous conflict that threatens civilization and checks all hope of human progress."

THE PURPOSE OF THE RESOLUTION.

Since men do not, as a rule, voluntarily seek death, even though they may have no hesitancy in offering up their own lives under sufficient provocation, yet they would decline to deliberately sentence their loved ones to war's enforced destitution and corrupting influences, and as the common people were but pawns shoved around the governmental chess-board at the will and whim of the war makers, it was felt that if they (the people) could be induced to voice their real sentiments in an organized way, every utterance would be a prayer for peace.

A MENACE TO AMERICAN NEUTRALITY.

In addition to this suggestion to the foreign powers and the labor forces under their jurisdiction, Labor's National Peace Council adopted a further resolution providing for the immediate calling of an extra session of the United States Congress for the express purpose of promoting universal peace; not merely through a temporary cessation of hostilities, but through the organized cooperation of all nations under law.

Since the Washington meeting of Labor's National Peace Council, ex-Congressman H. Robert Fowler, as its general counsel, has been instructed to file a brief with the

Federal Reserve Board charging that the United States has been involved in grave breaches of neutrality "through the medium of an extensive conspiracy composed of certain bankers and officers of Federal reserve banks and member banks acting in conjunction with agents of Great Britain, France, and Russia." J. P. Morgan & Co., and that firm's business allies, are named as chiefly responsible for the alleged "conspiracy" through which it is asserted that out of the enormous sum of \$220,000,000 utilized in the purchase and shipment of war materials for European belligerents, approximately \$20,000,000 of that amount had been obtained from Federal reserve banks and this action, together with the further attempts of these financial kings to secure the issuance of a tremendous block of Federal reserve notes amounting to hundreds of millions of dollars to be used for the same purpose, constituted a grave danger that menaced the peace of the United States of America.

PRESS PARTISANSHIP.

It has been insolently assumed by a part of the American press, for reasons that have never been satisfactorily explained, that there is but one point of view as to the European war.

Any attempt by right-thinking Americans to form an independent opinion has been, and continues to be, ruthlessly, violently, brutally throttled by the partisan press.

As evidence conclusively demonstrating the pernicious influences that make modern newspapers so unreliable a source of information and by their methods strangle truth, rape justice, and insult the intelligence of the people, permit us to point out "That Lord Northcliffe is the owner of the London Times, the Daily Mail (commonly called the 'Daily Liar' and the Evening News." He is also the controlling factor in the Nowoja Wremja, the leading paper in Russia, the Matin, of Paris, and owner of the Daily Mail, published in Paris. He is also credited with having big interests in several important American papers and supplies the cable news to a number of papers published in New York and elsewhere.

The various governments involved in the European conflict have furnished sufficient evidence to prove that the citizens of those nations had no voice in deciding the question of war and would gladly embrace any opportunity that would lead to the war's immediate or speedy termination.

They are helpless; they have been robbed of the power of initiative.

The United States is neutral, and so long as it remains neutral its citizens occupy the enviable position of being permitted to exercise their every influence in the direction of peace without having their moral or physical courage questioned or their honesty, honor, and integrity impugned.

Universal peace, that humanizing sentiment that is the thought by day and the dream by night of countless of God's children whose hearts throb with sympathy for the victims of man's inhumanity to his fellow men, is the aim and object of Labor's National Peace Council and all those identified with it, and constitutes the incentive for its glorious work of world redemption from the prevalent blood lust that holds sway.

Where do you stand on that question?

Are you for or against peace?

Do you want to help save your country from becoming involved in the European tragedy and aid in bringing to a quick close the bloody chapter of European history that is being written by the sword dipped in human blood? If you do, talk to your family, your intimate friends, your acquaintances and others you come in contact with, who are peace advocates, arrange a meeting, and establish a local branch of Labor's National Peace Council, select your officers and advise the national officers at headquarters, Briggs House, Chicago, Ill., of the formation of your organization and by mail you will be advised along what lines to proceed in order to render the most effective service, to bring into being peace universal and earn a world's undying gratitude.

Fraternally, yours,

LABOR'S NATIONAL PEACE COUNCIL,
FRANK BUCHANAN, *President*.
L. P. STRAUPE, *Secretary*.

Now, in doing that, our efforts squared with the declarations of the American Federation of Labor in convention for a number of years back. If you read that pamphlet, you might notice that we quote there the executive board's report on the question of war, and also the resolution that was passed in the Philadelphia convention in

November, 1915, where the Federation of Labor goes on record in favor of taking over all patents and equipment for the manufacture of munitions of war.

The CHAIRMAN. You mean to be taken over by the Government?

Mr. BUCHANAN. Yes, sir; which would mean a monopoly in the manufacture of munitions of war, which we have favored for years, and at the time—I can not remember the dates about this—but it was either before the organization of Labor's National Peace Council, or soon thereafter—the New York branch of this Labor's National Peace Council held a mass meeting at Carnegie Hall. All I know about who paid the expenses of it, etc., was that I simply responded to an invitation to speak there. Hon. W. J. Bryan also spoke there. I think it was after that that I spoke at Madison Square Garden. I was first invited to speak there and declined, wanting to get back to Chicago and to get home. I was approached by a committee and I finally accepted the invitation. They had a very large meeting at Madison Square Garden, with probably 100,000 people in and about Madison Square Garden. That is about the extent of my activities in New York.

Now, there is one thing that might be rather significant (and I spoke about it the other day): My activities in the Labor's National Peace Council were here in Washington in its organization, and afterwards my headquarters were in and about Chicago. I believe I did go to Cincinnati, Indianapolis, and Kansas City. As I say, it is significant, because Ernest Bohm, the treasurer of the organization, had charge of the activities of Labor's National Peace Council in New York and the East. He is not indicted. My activities were in Chicago, and was only active in the organization in accepting the presidency in the East.

The CHAIRMAN. What did your activities consist of?

Mr. BUCHANAN. Well, simply going to places and speaking before labor unions. The thought was, we were under the impression that the President was standing for peace. We had become concerned that this country might become involved in the European war on account of the *Lusitania* incident. The *Lusitania* had been sunk and negotiations were on. He had announced that he wanted to keep his fingers on the pulse of the people. We believed that he needed backing and encouragement; in other words, to have his hands held up, and we thought perhaps there were influences trying to pull him into war. My efforts were directed in going to different central bodies in the country and asking them to indorse what we were organized for, and then to elect representatives to respond to my call to meet the President and to express to the President the sentiment of their people in the different localities. When I say "different localities," I mean the localities they represented. The President declined to meet us, and then my associates, over my protest, decided to hold a meeting in Washington. I think the meeting was to be held the latter part of July. I was opposed to that. It seemed to me to be too much like a dog barking at the moon. The President had refused to meet us, and I did not think there was much to be accomplished. At any rate, when they did that over my protest, I resigned as president, and did not have anything to do with it after that.

Mr. NELSON. They did not meet the President?

Mr. BUCHANAN. No, sir; and I declined to meet with them, and declining to do that, I did not feel I could remain president.

The CHAIRMAN. You resigned before you were indicted?

Mr. BUCHANAN. Yes, sir; I resigned in the latter part of July.

The CHAIRMAN. Who are the persons who were indicted with you?

Mr. BUCHANAN. Well, those who were active with me included Taylor, who succeeded me as president after I resigned and was a member of the executive board.

Mr. NELSON. He did not hold any official position in the Government service, did he?

Mr. BUCHANAN. Not to my knowledge. I do not remember of any. I think, as far as my recollection goes now, that Taylor and I were the only ones who had been officers who were indicted, and with us were Lamar and Von Rintelen. I never heard of Lamar during my activities.

Mr. NELSON. Was he a member of the association?

Mr. BUCHANAN. No, sir; and I did not know Von Rintelen until this publicity came about in the newspapers. Martin, Schulties, and Fowler were indicted.

Mr. NELSON. Fowler was a member of your organization?

Mr. BUCHANAN. Yes, sir; general counsel.

Mr. NELSON. Schulties and Martin were not of the council?

Mr. BUCHANAN. No, sir; I objected to Schulties being a member of the council, and my objection was sustained. I objected, not that I knew anything against him, but I did not know him. I insisted that the officers be active trades-unionists, and all were officers of their unions except Fowler, the general counsel. We could not get an active member of the trades-unions who was a lawyer.

The CHAIRMAN. Then, only two members of Labor's Peace Council were indicted, the general counsel being the third, if he be a member, and three others, who were indicted, Martin, Schulties, and Lamar, with Von Rintelen making a fourth, who were not members.

Mr. BUCHANAN. Yes, sir; I mean, of course, not members during my time. I do not know what the organization consisted of after I left. I could not tell you that. After I resigned, the last part of July, I did not have anything to do with it.

The CHAIRMAN. You, Taylor, and Fowler had no connection with these other men?

Mr. BUCHANAN. No, sir.

The CHAIRMAN. That is, so far as peace movements were concerned?

Mr. BUCHANAN. No, sir; they were not part of the council, officially. Schulties and Martin were in the meeting when we organized, but Monnett was not, at that time. It was an open meeting, you understand, and anybody could attend it. It was not a closed meeting. There were two or three ladies there also.

Mr. NELSON. It was a meeting of men who were opposed to getting into the war, and anybody could come?

Mr. BUCHANAN. Yes, sir; and I objected to no one coming there.

Mr. NELSON. Where was the meeting held?

Mr. BUCHANAN. In the St. James Hotel.

Mr. NELSON. In the parlor?

Mr. BUCHANAN. It was a sort of hall there.

Mr. NELSON. Who called the meeting?

Mr. BUCHANAN. The meeting was called by the Chicago branch of Labor's National Peace Council.

Mr. NELSON. Does that pamphlet give the names of the men who called it?

Mr. BUCHANAN. I am not certain about that. It seems to me it gives the Chicago branch of the organization.

The CHAIRMAN. Do you know, Mr. Buchanan, why the other members of the peace organization were not indicted?

Mr. BUCHANAN. I do not know why. The treasurer and secretary, neither one, was indicted. They went all through with it, though. I do not know what they are doing now. Mr. Bohm, unless it has gone out of business, I think is still treasurer.

The CHAIRMAN. As far as you know, did this organization have any relation to any other government interested in the present war?

Mr. BUCHANAN. Absolutely none to my knowledge. They were not even in conference. I never met or talked with any representative of any foreign government that I knew of. I never saw them that I know of, at any time. I was going to say I never heard of them during my activities, but I can say now I never saw them at any time.

Mr. GARD. When did you first have knowledge that your connection with this matter charged in the indictment was being considered by the district attorney in New York?

Mr. BUCHANAN. Well, I do not remember, at the time. I got it from the newspapers.

Mr. GARD. Was that your first information—what you got from the newspapers?

Mr. BUCHANAN. Yes, sir; and I questioned the truth of that, because Mr. Marshall was credited with a statement that seemed to me to be a breach of his public duties as prosecuting attorney. This came out before anyone was before the grand jury—before the witnesses went there.

Mr. GARD. Do you remember what time that was first brought to your attention in the newspapers?

Mr. BUCHANAN. That is one thing I am weak about, remembering dates.

Mr. GARD. Was it in November?

Mr. BUCHANAN. I should say it was the latter part of November.

Mr. GARD. November of 1915, of course?

Mr. BUCHANAN. Yes, sir; certainly.

The CHAIRMAN. Have you any knowledge of the witnesses who appeared before the grand jury that found this indictment?

Mr. BUCHANAN. Well, my information in regard to that—and I just got it out of the newspapers—was that Straube, who was secretary of the Labor's National Peace Council (and the newspapers headlined this fact) was going to turn over books and records and was going to play smash with us. That was the first I heard about that. I stated that he could turn over all the correspondence and books and everything else; that I wanted the public to know all about it; that we were seeking publicity, in other words. They could have come to me and gotten anything I had. I did not have much, however. William F. Kramer was also taken over there.

Mr. NELSON. Suppose you give us the names and addresses of these people.

Mr. BUCHANAN. Very well; I have letters from them here. William F. Kramer, secretary and treasurer of the Blacksmiths and Helpers Union; L. P. Straube, is, I believe what they term business manager of the Commercial Portrait Artists Union. Mr. Canode, the one they took over there, was president of a printing company that seemed to have some trouble about collecting a printing bill after I was out. One of the troubles with the Labor's Peace Council was the lack of funds. James Short was another man who was taken there. He was more or less active during my time.

Mr. NELSON. All these parties live in Chicago?

Mr. BUCHANAN. Yes, sir; and the newspapers made much of these fellows being taken over there. Straube was reported as going to turn over the books and records and that that was going to put us all behind the bars. Canode made a statement about money matters and that I was going to "spill the beans" if Martin did not pay the bills. Kramer, the only one put before the grand jury, after interviewing them over there, was accredited with a newspaper statement reflecting somewhat on me.

Mr. NELSON. Is that a New York newspaper?

Mr. BUCHANAN. No, sir; a Chicago newspaper. They were all after me.

The CHAIRMAN. It is the Chicago Tribune of December 29?

Mr. NELSON. Did the Associated Press get it?

Mr. BUCHANAN. I do not know.

Mr. NELSON. Did you see any such newspaper quotations emanating from New York purporting to come from Marshall?

Mr. BUCHANAN. I do not know where they came from. I have clippings in my possession. Copies of these letters have already been filed.

Mr. GARD. I want to know the names of those who personally appeared before Marshall.

Mr. BUCHANAN. I could not say positively whether that information was brought to me or not. I will tell you how I got to these things. I knew them all, and know them favorably. I wrote to friends of mine to ask them if they made the statements credited to them. I did not believe and do not believe that those fellows could be bribed to give out a false statement to injure me, and I wanted to know if these interviews accredited to them in the newspapers were their statements, and as a result of my inquiries I have got these letters that I have put in the record. I have read them before, and I do not think you want me to take up time to read them again now. Every one of them denied the statements emphatically; in other words, their accredited statements in the newspapers were absolutely false, without any ground of truth. Canode stated that the statement accredited to him as being practically what he said before the grand jury was absolutely false, and as a matter of fact he had not been before the grand jury.

The CHAIRMAN. Have you any memorandum showing the name of the reporter who wrote the article in the Chicago Tribune of December 29, 1915?

Mr. BUCHANAN. I have Canode's statement here in this letter, to this effect:

A day or two after the article appeared the reporter responsible for it called up my office, in my absence, and asked my stenographer if I had made any comment on the

article, and on my stenographer answering that she did not know, and that he would have to talk to me about it, he then said he just wanted to know whether I had done any swearing after having read the article.

This is from Charles H. Canode's letter. He is president of the Bronson-Canode Printing Co. He goes on and says:

The comment, which wound up this interview relative to Mr. Buchanan, is all false. I never stated that to the reporter or anyone else, and do not know why this statement should have been accredited to me. I called Mr. Kendall, the Tribune reporter, over the phone, and he said that statement about spilling the beans was all a mistake, and that the other statements attributed were mistakes in the makeup of the paper, and no opportunity was given him to correct it.

This last statement from Mr. Kendall may be taken for what it is worth, but I want it understood that there is absolutely no basis for them attributing those statements to me.

That is what he has to say about that. That is Charles H. Canode, president of the Bronson-Canode Printing Co.

The CHAIRMAN. Have you any information as to any other witnesses who were summoned before the grand jury relating to the indictment as found against you?

Mr. BUCHANAN. The newspaper reports are all I have in my mind. I have in mind Mr. Gompers and Mr. Morrison. I tried to get a list of the persons appearing before the grand jury, but they refused to give it to me.

Mr. GARD. Who refused to give it to you?

Mr. BUCHANAN. The district attorney.

Mr. NELSON. Did you apply by letter or personally?

Mr. BUCHANAN. Personally. It was his assistant I saw. I had a lawyer with me at the time.

Mr. NELSON. In your activities for peace, or against war, were you acting in any way as a Member of Congress?

Mr. BUCHANAN. Oh, no. Of course, however, I was a Member of Congress.

Mr. NELSON. And your propaganda, or your campaign, was merely carrying out the attitude you had expressed in the House?

Mr. BUCHANAN. Yes, sir; I had expressed my attitude before Congress adjourned as being opposed to traffic in munitions of war and being willing to support a bill to that effect.

Mr. NELSON. Now, in one group of your charges you deal with the relations of Mr. Marshall to this propaganda or this movement of furnishing munitions of war to foreign countries. Now, you opposed that in all these speeches you made in various meetings?

Mr. BUCHANAN. Yes, sir.

Mr. NELSON. This idea of furnishing munitions to foreign countries you opposed?

Mr. BUCHANAN. Yes, sir; and we had gotten information—Fowler, Monnett, and myself—and I could not state what time, but some time in July last, 1915, that there were being shipped in conflict of law, these munitions. We went before the Secretary of State—

Mr. NELSON. Who? Mr. Bryan?

Mr. BUCHANAN. No; Mr. Lansing, after Mr. Bryan had resigned; and we pointed out, or tried to point out, where munitions of war were being shipped in conflict with the law.

Mr. GARD. Was Monnett, at that time, connected with the Labor Peace Council?

Mr. BUCHANAN. Yes, sir; during the time I was president.

Mr. GARD. What was Monnett's connection?

Mr. BUCHANAN. Well, he was asked by Fowler, or some one, to confer with us or counsel with us.

Mr. GARD. Was he acting as a member or attorney for the council?

Mr. BUCHANAN. Well, I suppose he was associate counsel with Mr. Fowler.

Mr. GARD. Was he a member of the organization—Labor Peace Council?

Mr. BUCHANAN. You understand, that was, I think, the first time I had met Monnett. I think he had been called in by Fowler. There was some talk of taking proceedings, but I am not familiar enough to talk about that. I let them handle that end of it. I happened to be here in Washington and went with them before the Secretary of State.

Mr. NELSON. Were Mr. Fowler and Monnett, as counsel, receiving any salary?

Mr. BUCHANAN. No, sir.

Mr. NELSON. In your organization of the peace council it was public, was it not?

Mr. BUCHANAN. Yes, sir.

Mr. NELSON. And in your travels, did you speak as president of this peace council in a public way?

Mr. BUCHANAN. Oh, I think so.

Mr. NELSON. That is, the audiences knew——

Mr. BUCHANAN (interposing). Well, the central bodies that I went before had extended their approval, first by resolution.

Mr. NELSON. The point is, there was no secrecy about this thing?

Mr. BUCHANAN. No, sir.

Mr. NELSON. And you came to Secretary Lansing protesting against something that you considered in violation of law, and he knew that you were appearing there as a member of this national peace council?

Mr. BUCHANAN. Yes, sir; I think so.

Mr. NELSON. There was no concealment of your efforts at all?

Mr. BUCHANAN. No, sir; when we organized we selected a committee, and asked the President to meet us.

Mr. NELSON. That was a committee of the peace council?

Mr. BUCHANAN. Yes, sir; I was authorized by the council to ask the President if he would meet the committee.

Mr. NELSON. Whatever you did as president was in the open—the President and Secretary of State and all knew you were acting in that capacity?

Mr. BUCHANAN. Yes, sir; that is why I say I do not fear the closest scrutiny.

Mr. NELSON. The conspiracy, if there was a conspiracy, was underneath; if anywhere?

Mr. BUCHANAN. I do not know how it could be a conspiracy. We did not discuss the question of strikes.

Mr. NELSON. There could not be a conspiracy in public.

Mr. BUCHANAN. I never discussed the question of strikes.

Mr. NELSON. I do not want to interrupt you or get you off your train of thought, but I wanted to satisfy myself whether all the public officials knew about the peace council and that you were going to the

Secretary of State to protest against a movement as president of an organized body of public men and private citizens.

Mr. BUCHANAN. Our protest there was against what we believed to be something done in violation of law—the shipping of munitions of war and passengers on the same ship, which the law plainly seemed to prohibit. I think there were some other violations, too.

Mr. NELSON. Can you cite the law?

Mr. BUCHANAN. No; but I can get that for you. I have it in my office. I stated that at no time I discussed or tried to bring about strikes. It never occurred to me to interfere with commerce at any time.

Mr. NELSON. Did you make any threats?

Mr. BUCHANAN. No, sir; no threats. Of course I may have criticised those who were manufacturing munitions of war. I expect I did. I do not remember just what I did say in regard to that.

Mr. NELSON. Your interview was in the nature of a protest?

Mr. BUCHANAN. Yes, sir; and I believe that anybody who knows my record in the trades union movement would not believe I would go to a union and ask them to strike without knowing the cause.

Mr. NELSON. You severed your connection officially with the labor unions when you became a Member of Congress?

Mr. BUCHANAN. Yes, sir.

Mr. NELSON. And this peace council was no part of the organization known as the American Federation of Labor?

Mr. BUCHANAN. Oh, no; any more than every officer was a member of the Federation of Labor.

Mr. NELSON. Mr. Gompers and Mr. Morrison had no control over it?

Mr. BUCHANAN. I did not so consider it.

Mr. NELSON. What was it generally considered?

Mr. BUCHANAN. It was generally considered it was no part of the American Federation of Labor although we were asking the approval of the central bodies affiliated with the American Federation of Labor.

Mr. NELSON. In other words, you were carrying out your idea of the preservation of peace, and your opposition to any movement toward war by going to these organizations, but it was not something that the organization itself had appointed and instituted and was approving?

Mr. BUCHANAN. No, sir; I did not think it was so considered or that it was acting in conflict with the Federation. We were simply giving voice to our views and ideas about this matter.

Mr. NELSON. Was Mr. Gompers consulted in the formation of this peace council?

Mr. BUCHANAN. I called up Mr. Gompers and asked him if he would attend the meeting, and he asked me what they were going to do, and I told him I did not know. I had talked with Mr. Gompers before this. I had predicted a great achievement for the labor movement. I believed that if the sentiment which opposed war could be crystallized and its influence exerted, an influence could be exercised that might extend across the water and bring an early termination to that murderous strife, and that success in this would stand out like a shining star in achievements in the history of the world.

Mr. GARD. Can you give the approximate date of your visit at the time you called upon Secretary Lansing? What month was it?

Mr. BUCHANAN. I am pretty certain it was in July.

Mr. GARD. You organized in June, didn't you?

Mr. BUCHANAN. Yes.

Mr. GARD. And in July, a month afterwards, you saw him?

Mr. BUCHANAN. I perhaps could get the exact date, but I think it was some time in July.

Mr. GARD. When did you resign?

Mr. BUCHANAN. It was before I resigned, yes. When I resigned as president I was through with the thing.

Mr. GARD. How long were you acting as president?

Mr. BUCHANAN. From the 22d of June. I think my resignation went in on the 29th of July. My activities ceased a few days before that.

Mr. GARD. You were there, then, about a month?

Mr. BUCHANAN. Oh, yes; about five weeks. As I remember, I was inactive several days before my resignation went in. When they decided to hold that meeting over my protest I decided to resign, but I do not think I put in my resignation right then.

Mr. NELSON. Before you put in your resignation you had heard no complaint on the part of anybody as to this peace council?

Mr. BUCHANAN. No.

Mr. NELSON. I mean on the part of any public officer?

Mr. BUCHANAN. No.

Mr. NELSON. You did not?

Mr. BUCHANAN. No; the first thing I knew of it was the letter that was written to the President criticizing him for not meeting us. Tumulty resented it, and gave it out to the newspapers. It was, perhaps, a pretty stiff letter.

Mr. NELSON. Did he give out the letter itself or your reply to it?

Mr. BUCHANAN. Both; Tumulty gave out my reply to the newspapers. That was the first thing that would indicate that the administration was not in accord with our movement. We hoped to have the approval of the administration because we were working for what the President himself wanted—peace.

Mr. NELSON. Had you had any interview on this question of munitions with Secretary Bryan before that?

Mr. BUCHANAN. No. Does anyone here remember the date that Secretary Bryan resigned?

The CHAIRMAN. It was some time in the latter part of June or the latter part of July, I think.

Mr. GARD. The matter of the *Lusitania* came up about the 7th of May. It was shortly after that.

Mr. NELSON. You were very aggressive against the sale of munitions. Was Mr. Bryan's policy also opposed to that?

Mr. BUCHANAN. No; not to my knowledge. He took a position that to me was a disappointment. His position was that it would be in conflict with international law to stop the sale of munitions. Of course he was very strong for peace. That is my recollection of the matter. The reason I asked the time he resigned is that I want to say that I went to see Mr. Bryan. I had become quite a little concerned on the point that there was grave danger of this country's becoming involved.

Mr. NELSON. The reason I made that inquiry is that I want to know whether what was done was done in retaliation of anything you have done officially.

Mr. BUCHANAN. I went to Mr. Bryan, but he was not in his office. I made this statement to Secretary Lansing, that I was with the President as long as he was standing for peace, but I would be just as strong against him when he did anything toward war as I was with him as long as he was standing for peace, and that if I knew Mr. Bryan he would resign before he would lend a hand in doing anything toward war. I did not know it at the time, but his resignation was in then, and I hardly got out of the office there until I saw it in the newspapers. I did not know it at all when I was in there talking with Secretary Lansing.

Mr. NELSON. You mean Assistant Secretary?

Mr. BUCHANAN. He was Assistant Secretary then. He is Secretary now. I never saw Mr. Bryan until some time after his resignation. I believe the first time I saw him was at his house, after the peace council was organized. Of course, I had hoped that the trade unions would take up this movement for peace and make it a success. I knew it would not be much of a success unless they did.

The CHAIRMAN. Did you talk with Mr. Bryan about the organization of the peace council?

Mr. BUCHANAN. I do not know that I did. I have always tried to be of service, to serve the people. There is nothing, to my mind, that is so dangerous—well, say, so harmful and hurtful—to the great masses of the people as war.

The CHAIRMAN. In the talk you had with Mr. Bryan was he in sympathy with this peace council?

Mr. BUCHANAN. I do not remember talking to him about the peace council. I talked to him about peace and about keeping this country out of the war. I do not remember of talking to him about the council.

Mr. NELSON. Are you sure it was not in his mind that you would act as a representative of this peace council?

Mr. BUCHANAN. My memory does not serve me well enough to be certain about that. I think he did. I think I was president at that time.

Mr. NELSON. That was when you were president?

Mr. BUCHANAN. Yes; president of the peace council.

Mr. NELSON. Was the administration aware that you were with this organization?

Mr. BUCHANAN. Yes; it was on the letterhead for the peace council that I wrote. There was absolutely nothing under cover. Everything was out in the open.

The CHAIRMAN. Mr. Buchanan, do you know of any witnesses, except the names you have given us, of persons that were summoned before the grand jury?

Mr. BUCHANAN. I know of some witnesses that might be, that I think perhaps would be, able to give information, but I am not certain yet. I do not know enough yet about it to give their names. Of course, you can not know what a witness is going to state, anyway. You have got to do the best you can in getting the information.

The CHAIRMAN. Do you know of any witnesses, except the names you have given, who appeared before the grand jury?

Mr. BUCHANAN. I did have information on that, but it was so meager that I do not know that I ought to say that I do know of any others. There was Milton Snellings, of Washington, here. He was organizer for some engineers, and was also an officer in this national peace council.

Mr. GARD. Milton Snellings?

Mr. BUCHANAN. Yes, sir.

Mr. GARD. Do you say he lives in Washington?

Mr. BUCHANAN. Yes, sir.

The CHAIRMAN. Do you know at whose instance the machinery of the district attorney's office was set in motion?

Mr. BUCHANAN. I have my own opinion about it. I do not know that I could prove it. You know there are a great many things you can not prove. I have information with regard to this matter, but I do not think there is any use of setting it up, because I can not bring the facts to prove it.

The CHAIRMAN. We have the power to subpoena witnesses and find out what they know.

Mr. BUCHANAN. I would not give the name of any witness that talked to me in confidence.

The CHAIRMAN. Can you not give the names of the witnesses, so that the committee may subpoena them?

Mr. BUCHANAN. It would not be proper for me to do it. The information was given to me in confidence, and I would not want to violate it.

Mr. GARD. It would be entirely proper unless they asked you to withhold the information or their names.

The CHAIRMAN. I am trying to get at individuals who would know just how the machinery was set in motion.

Mr. BUCHANAN. Well, I think if you will get the head of the Secret Service in New York, perhaps he can give you information that would be of interest from the records of the office over there.

The CHAIRMAN. What is his name?

Mr. BUCHANAN. I think it is Bielaski.

The CHAIRMAN. He used to be here in the Attorney General's office, didn't he?

Mr. BUCHANAN. Yes; I think so.

The CHAIRMAN. His name is A. Bielaski, isn't it?

Mr. BUCHANAN. I think that is it.

The CHAIRMAN. As to H. Snowden Marshall, you never had, prior to your indictment, any connection with him direct?

Mr. BUCHANAN. No.

The CHAIRMAN. You don't know of any anumus he may have toward you except for your public charges in the Congress of the United States?

Mr. BUCHANAN. I have nothing personally against Marshall. I am opposed to his methods. I don't know him personally. He may be the nicest fellow in the world personally.

Mr. GARD. Have you ever talked with Mr. Gompers since he appeared before the grand jury?

Mr. BUCHANAN. I have not.

The only reason I referred to these men over there was that I believed these statements were falsified. Of course, I suppose, if I had been guilty and they had had any knowledge on the subject—if I had really done anything under cover or committed a crime—I would have sneaked around, seen them, and tried to get them not to say anything about me. But I have nothing to fear if they stick to the truth.

The CHAIRMAN. Have you any knowledge yourself as to any witnesses other than those you have given us which would tend to establish any of the charges which you have made?

Mr. BUCHANAN. As I understand the law, it is a violation of law for them to use the money of the Government to investigate labor strikes. My information is that they have been using the money that way, and I believe it can be shown that it was used that way. I have not talked with any of those who, I think, know about these matters in regard to this matter, although I have talked to them about other things. I know there was a strike on, I think it was at Bridgeport, and I know the men who were directing that strike, so to speak.

Mr. NELSON. What are their names?

Mr. BUCHANAN. Well, one was the vice president of the Bridge and Structural Iron Workers, by the name of Johnson.

Mr. NELSON. What is the law that you have in mind that prohibits the money being spent to investigate labor strikes?

Mr. BUCHANAN. Well, where we put in the bill a proviso that no part of the money should be spent for that purpose.

Mr. NELSON. Was not that a provision in the Sherman law, that the money could not be used for that purpose?

Mr. BUCHANAN. No; the Sherman law excludes ---

The CHAIRMAN. It was in the appropriation bill.

Mr. NELSON. It provided that none of these funds should be used to prosecute labor unions under the Sherman law.

Mr. BUCHANAN. Yes.

Mr. NELSON. Is that what you have in mind?

Mr. BUCHANAN. Yes. We excluded the labor unions from the trust laws afterwards. That went through anyway, even after we passed the Clayton bill.

Mr. NELSON. Did Mr. Snowden Marshall investigate this Bridgeport strike?

Mr. BUCHANAN. That is my information. That investigation has been going on for some time. Of course, if anything is wrong about it ---

The CHAIRMAN (interposing). Did you have any connection with the Bridgeport strike?

Mr. BUCHANAN. Not the least bit in the world. I just knew of it by reading the papers. Johnston and Keppler were connected with it.

Mr. NELSON. That did not occur when you were president of the peace council?

Mr. BUCHANAN. I was having a little dispute about that just the other day. I think it did. I met a friend of mine and we talked it over, and he said his recollection was it did not occur at that time. I do not remember the date. My friend said he thought it was before that. I think it was on at that time, but I knew nothing about it. I think perhaps I may have seen it in the newspapers. I know

Mr. Gompers was brought into it, and I had a talk with Mr. Johnston about it—he was the vice president of the International Association of Bridge and Structural Iron Workers. I talked with him about it. He took the position that if Mr. Gompers had stayed away they would have had the thing settled. After this indictment, I went to see him and find out what the strike was about, if there was anything wrong about it, but I did not ask him about the date. I forgot to ask him about the date when he was here.

The CHAIRMAN. Then your talk with Johnston, who conducted the Bridgeport strike, was subsequent to the indictment?

Mr. BUCHANAN. Yes; subsequent to the indictment. I never talked with him before. I believe I saw him at a meeting of the ironworkers in Newark, before whom I spoke. He is from Newark. I believe I saw him there and spoke to him there. Johnston also made a report to the ironworkers convention in regard to it.

Mr. NELSON. What relation did Johnston have to the peace council?

Mr. BUCHANAN. None.

Mr. NELSON. How could you or your organization have anything to do in the way of directing that strike, it not being any part of a labor organization?

Mr. BUCHANAN. We could not. The natural ridiculousness of the charge as regards me appears on the face of it. I have been in the trade-union movement and I know it from A to Z. I was international president for a number of years. I think I have a fair reputation in the minds of those who know me. I know in the first place, that I would discredit myself and not be able to have any influence if I was to go to organize or to have anything to do with a strike. The proposition is so ridiculous that any one that knows me would not give it a moment's thought. I believe I had the reputation of being opposed to strikes until every effort had been exhausted to adjust grievances without strikes. I wanted to know the details and know the resources before advising any action, and for me now to be charged with advising strikes by organizations that I had no connection with at all is so ridiculous that it is laughable almost.

Mr. NELSON. Your organization, the peace council, was not indorsed by the executive officers of the Federation of Labor?

Mr. BUCHANAN. No; I do not think so.

Mr. NELSON. They gave you no directions at all as to what you were to do?

Mr. BUCHANAN. No.

Mr. NELSON. Mr. Gompers refused to attend because you had no authority from subordinate organizations?

Mr. BUCHANAN. We did not pretend to have any.

Mr. NELSON. Your purpose was to carry on your propaganda merely by going around and making speeches?

Mr. BUCHANAN. Yes, to crystallize sentiment.

Mr. NELSON. Public sentiment?

Mr. BUCHANAN. That is all.

The CHAIRMAN. Your idea of doing it was through the labor organizations?

Mr. BUCHANAN. How is that?

The CHAIRMAN. Your idea was to crystallize sentiment through the labor organizations?

Mr. BUCHANAN. Yes.

The CHAIRMAN. Was Mr. Johnston indicted?

Mr. BUCHANAN. Do you mean the Johnston I was speaking of?

The CHAIRMAN. Yes.

Mr. BUCHANAN. No; unless it has been recently. When I saw him he said they were still making a fuss over there and investigating.

Mr. GARD. May I ask a question?

The CHAIRMAN. Yes.

Mr. GARD. Mr. Buchanan, in the presence of your counsel, and for the purpose of giving us information upon which to proceed, and which I think is very necessary, I am going to call your attention to a statement you made to your counsel. Reference is made to charges Nos. 1 and 4, and then under the head of affairs of what is called the Rock Island Railway system and the connection of H. Snowden Marshall, the witnesses are cited—Samuel Untermeyer and Nathan Amster. These were counsel engaged in the case, were they not, Mr. Hill?

Mr. HILL. They were. The proceedings were for the settlement of the question of receivership for the railroad. The litigation was over the conduct of that road. There had been a committee appointed, I think, to make an investigation and report, and they were the attorneys for that committee. It had to do with the juggling with the assets of the road in a manner similar—I will not say exactly the same, but flavoring of the New Haven matter.

Mr. GARD. Have you the names of any other witnesses in connection with that?

Mr. HILL. No, sir. This was the information I got from some source which I do not remember now. I am not sure whether it was Mr. Monnett or someone interested in these lawsuits in New York. Anyhow, they reported to me that they had the ears of some of these people connected with it and it was through this office, I understood, that this juggling was done with those assets.

Mr. NELSON. What office?

Mr. HILL. The district attorney's office.

Mr. GARD. Snowden Marshall's office?

Mr. HILL. Yes. He gave me the names of these witnesses.

Mr. GARD. Do you know what they would testify to?

Mr. HILL. No.

Mr. GARD. You have never talked with him?

Mr. HILL. No, sir. That is the difficulty, you see. I did not have the privilege of investigating or interviewing them.

Mr. GARD. You have no witnesses, either of you, who would testify to these facts, to your knowledge?

Mr. HILL. No, sir.

Mr. GARD. Next on this list is the case of the American Tobacco Co. Here you name as witnesses Isaac Oakes, Barnett Wolff, and John E. Locker. Have you had any conversation with any of them?

Mr. HILL. I have not.

Mr. GARD. Have you had any conversation with any of these witnesses, Mr. Buchanan?

Mr. BUCHANAN. No; I have not. I was given those names when I was over in New York.

Mr. GARD. Do you know any other names?

Mr. HILL. No; not in reference to that.

Mr. GARD. Mr. Buchanan, do you have any objection to stating who gave you these names?

Mr. BUCHANAN. Mr. English.

Mr. GARD. Who is he?

Mr. BUCHANAN. He is an attorney.

Mr. GARD. Do you know what his first name is?

Mr. BUCHANAN. Arthur—Arthur English.

Mr. GARD. Arthur English?

Mr. BUCHANAN. Yes.

Mr. GARD. He is an attorney in New York?

Mr. BUCHANAN. Yes.

Mr. GARD. Now, the next thing that appears is the charge of Mr. Marshall securing immunity, for financial profit, of persons violating United States laws and participating in conspiracies. These are charges 2 and 3, and the witnesses mentioned are Charles E. Whitney, Wilson Brice, Cochran & Manton, and Ernest Baldwin. Have you talked with any of these witnesses?

Mr. BUCHANAN. No.

Mr. HILL. I talked with Mr. Manton. That covers these articles of impeachment that relate to conspiring together with persons, firms, or corporations in collusion to control prosecutions. That is Mr. Manton, of the firm of Burke, Cochran & Manton.

The CHAIRMAN. Have you their addresses there?

Mr. HILL. No; but they are a prominent firm of lawyers.

Mr. GARD. Who is this Charles E. Whitney?

Mr. HILL. He is a lawyer in New York. I don't know him.

Mr. GARD. You have met him?

Mr. HILL. No.

Mr. GARD. Have you talked to him about this matter?

Mr. HILL. No.

Mr. GARD. Will he give information along that same line?

Mr. HILL. I have been informed that he would.

Mr. GARD. Have you talked with this Wilson Brice?

Mr. BUCHANAN. No; I have not.

Mr. HILL. No; I have not either.

Mr. GARD. Have you talked with Ernest Baldwin?

Mr. HILL. No.

Mr. GARD. Mr. Buchanan, have you talked with him?

Mr. BUCHANAN. No.

Mr. HILL. Mr. Buchanan was present when Mr. Manton made his statement.

Mr. NELSON. What leads you to believe that these others will furnish similar testimony?

Mr. HILL. These names have been given to me by Mr. Manton or Mr. Buchanan, or some one who has been down here. They have talked with men who were indicted under the same charge and by the same action of the grand jury. I myself have not seen them. I will say that in conducting a lawsuit I feel very much at a loss unless I feel sure what the witnesses are going to testify to before bringing them into court.

Mr. GARD. That is why we are asking, you know, in order to find out what you know.

Mr. HILL. I do not feel like insisting upon the committee bringing somebody up here that will not give us any light on the subject. The

purpose of this committee is to get light on the subject. It would be big expense to the committee to bring witnesses here that could not throw any light on it. I do not know what these men will testify. I have not had an opportunity to go down there. Mr. Buchanan has not felt like making the trip himself or defraying my expenses in order for me to make it.

Mr. GARD. The next we have here are Nos. 10 and 11, about corrupting and neglecting to prosecute, where there is an allegation that New York City has been made a military and naval base for foreign belligerent powers, and you say that you are prepared to produce before this committee a large number of persons of good repute who will testify and establish beyond doubt the truth of this charge. Have you any witnesses under this head?

Mr. HILL. Yes, sir. I will have those names within a short time.

Mr. GARD. You haven't anybody in mind now? Under this head you say that you will produce a large number of persons. Was it your idea to subpoena Government employees who were down at the docks and saw the loading?

Mr. HILL. I did not have that so much in mind as reports of the Government as to some of those fellows who were in New York, and I have the documents of some of the courts where suits have been brought and proofs had, which show how many tons and rounds of ammunition and other stuff were put on board the *Lusitania*.

Mr. BUCHANAN. Have we a list of those names?

Mr. HILL. I think we have that now. It is in my office, I think.

Mr. BUCHANAN. It was a matter of public notice at different times.

Mr. NELSON. Will you furnish us with those names?

Mr. HILL. Yes, sir.

Mr. NELSON. In the matter of corrupting and neglecting to prosecute, you say the material is being collected and will be presented at a later date?

Mr. HILL. It has not been collected yet. There was one man in New York that claimed to know something about it, but upon questioning him closely I found that he did not know anything definite; that he had gotten his information largely from newspaper reports.

Mr. NELSON. That was in regard to foreign enlistments?

Mr. HILL. He said he had read where an army was being trained in New York State, up the Hudson River somewhere. I did not rely very much upon that statement.

Mr. NELSON. You did not rely on that?

Mr. HILL. No. I would not give so much for that.

Mr. GARD. The next is under charge No. 13, which relates to the use of his office in carrying on a newspaper propaganda. Have you any testimony in regard to that except the newspapers themselves?

Mr. HILL. I have not any testimony so far except the newspapers themselves. Some of these have been collected with other items and prepared interviews.

Mr. GARD. You say you have them?

Mr. HILL. Yes.

Mr. GARD. No. 14 is in connection with the charge of aiding, abetting, and permitting the unlawful use of subpoenas and other processes before the grand jury. That I personally regard, and I think the committee does, if it is proved, as a very grave offense. The charge is that he has misused his office and subpoenas and

processes for evil. You have named as witnesses here Stanchfield, Levy, Von Neuber, Leary, Gilchrist, and Mayer—Hon. Julius Mayer. Have you interviewed any of them?

Mr. HILL. No, sir; I have not.

Mr. GARD. Have you, Mr. Buchanan?

Mr. BUCHANAN. I talked with a lawyer, it seems to me now. I am pretty sure I did, and I think we had a conference on his invitation. He will be before the committee, if you want him. We have already given his name.

Mr. GARD. Have you talked with Stanchfield, Leary, Gilchrist, or Maher?

Mr. HILL. That information came through his lawyer down in New York.

Mr. GARD. Have you talked with any of these men?

Mr. HILL. No.

Mr. GARD. Have you the names of any witnesses aside from these that would throw light upon this question?

Mr. HILL. I do not think so at this time.

Mr. GARD. The next charge is No. 16—aiding, abetting, and approving the unlawful expenditure of public moneys. You refer there to the executive, legislative, and judicial appropriation bills.

Mr. HILL. I think that comes under the subject.

Mr. GARD. That refers to money used to investigate strikes?

Mr. HILL. Yes.

Mr. GARD. The next ones—Nos. 17 to 22. These charges relate to procuring foreign judges to come in there and attempting to improperly influence them. In that connection you have named Mr. Mayer, Hand, Sessions, Hinkle, and Cushma. Have you talked with any of these men?

Mr. HILL. No; I have not. Some of our friends came down here and reported, and some of this information came from Mr. Monnett.

Mr. GARD. Mr. Buchanan, have you talked with any of these men?

Mr. BUCHANAN. No.

Mr. GARD. Which ones of them?

Mr. BUCHANAN. None.

Mr. GARD. You have named Messrs. Hand, Sessions, and Cushma.

Mr. BUCHANAN. Yes.

Mr. GARD. The next charges, Nos. 23 and 24, relate to his being a party to conspiracies to pick out jurors, grand and petit, so as to try and manipulate decisions of cases.

Mr. HILL. As we have it classified, it relates to some other subject, together with witnesses. I think the witnesses are Alexander Gilchrist and the clerk of the court.

Mr. GARD. You have given here Patterson and Gilchrist and Leary. Have you any others?

Mr. HILL. No.

Mr. GARD. The next one refers to the Tanzer and Osborne case. We have here the numbers from 25 practically down to 37. You refer to hearings for any other witness on that.

Mr. BUCHANAN. Yes, sir; Mr. Slade is here. I think he has some other witnesses on that.

Mr. HILL. I think you might very well put down the name of Mr. Oppenheimer.

Mr. GARD. What is his first name?

Mr. HILL. Herman H. Oppenheimer. He has been indicted several times for the same offense, and was just recently acquitted. I do not know how much his testimony is worth. At the time he was acquitted the judge gave the prosecutors a very severe criticizing for indicting him for the same offense so many times.

Mr. GARD. Nos. 34 and 35 are in relation to corruptly and willfully refusing and failing to furnish certain material, and charge him with retaining corrupt, negligent, and unfit persons in his office, and charge him with being a corrupt and unfit person to retain the office of district attorney of the United States.

Mr. HILL. The last are general charges.

Mr. GARD. General charges; yes.

Mr. HILL. Anything these others include will be proved under them.

Mr. GARD. Nos. 38, 39, and 40 are about the same purport and relate to improper conduct. They are all classified, in your mind at least, under what has gone before?

Mr. HILL. There is one other case that I thought had been presented by Mr. Buchanan before I was called into this case. It comes under the first four charges there, of conspiring and conniving with persons, firms, and corporations, etc. There was the case of Julius Strauss & Co. (Inc.). It involved the collection of a lot of customs duties. I went into that in considerable detail, and I know about it, and I think under that head it is entirely proper for investigation. I understand that the Treasury Department, under date of June 14, 1914, requested the district attorney, Mr. H. Snowden Marshall, to proceed to collect about \$400,000 in customs duties. It was a case of smuggling by this firm of Julius Strauss & Co., and Mr. Slater was brought before the Treasury Department, and his written statement was taken, which I would like the committee to ask for. The Treasury Department ordered the collection of this money, and when the matter was referred to the district attorney, Mr. Carstarphen, one of the assistant district attorneys, was made the attorney for Julius Strauss & Co. They paid him a fee of something like \$7,500 at one time. I know there was a fee paid down and an agreement to pay the balance later. Anyhow, there was a agreement to pay that amount. The matter dragged along and there were probably other fees paid him. There was a criminal prosecution against this firm. Statute of limitations has run and all this firm owed the Government is lost. The firm is now bankrupt, and the Government is deprived of its \$400,000.

The CHAIRMAN. There is no indictment in connection with this?

Mr. HILL. No.

Mr. GARD. Do you know any other witnesses in this matter?

Mr. HILL. I think a statement of that was filed with you, and I would have had it down there under the general head of Rock Island or the Tobacco cases.

Mr. GARD. Have you any other witnesses than these that you have talked with about this matter, Mr. Buchanan?

Mr. BUCHANAN. No. I have not any others in mind. There is another matter—Mr. Bright's letter.

Mr. HILL. I will say that this man Bright was connected in some manner with a railroad in which New York capital was interested, down in Uruguay, and some one in connection with him makes a

report on the stock, either the preferred or the common that had not been sold, and that there were no profits. This is in the southern district of New York. For the purpose of evading taxation they made a report to the State of New York that the bonds or stocks were sold and that there were no profits yielded and therefore no taxation was due to the State. As a matter of fact, the bonds were sold and the stock was held in Paris. Some one went down there, under the direction of Mr. Marshall, and served notice upon Bright to appear there and deliver this stock of this corporation. And it seems their man was looking for a juggling of these assets. Because the man could not furnish the stock at the request of the district attorney, he was cited for contempt proceedings and sentenced to jail for 11 months. He had made a report that the stock was in Paris, where it had been attached, or where it was held under an embargo. He could not deliver the stock. He was not in a physical position to deliver it, yet, in spite of that fact, he was cited for contempt, and the district attorney made an argument against Bright, and he was sentenced to 11 months in jail for contempt.

I merely mention this Bright matter to show the nature of the evidence he can give you. I do not know the connection he had with the railway in Uruguay, or how he came to be connected with it. I know he was connected with the railway project in Uruguay. He was sent to jail for 11 months because he could not do something that was a physical impossibility.

I think Mr. Martin Littleton is his attorney now. Probably he can give you a great deal of light on that matter.

The CHAIRMAN. Of your own knowledge, Mr. Hill, you know nothing about these charges?

Mr. HILL. No, sir.

The CHAIRMAN. There is no evidence that you can give the committee that would enlighten us in any way in regard to it?

Mr. HILL. No, sir; gentlemen, I can not give you any myself. I have only had occasion to talk to two or three men, and the balance has been information that has been brought to me by friends or to Mr. Buchanan. Mr. Monnet spent a week down in New York, because he was indicted at the same time, and while down there he learned quite a good deal.

Mr. GARD. Have you any more names in connection with this?

Mr. HILL. No. I have no other names. He told me about what these people would testify to, so far as I have given it to the committee, but as to the others, I do not know what they will testify to. Mr. Slade has had his entire office at work compiling a statement of what these various witnesses will testify to.

TESTIMONY OF DAVID H. SLADE.

(The witness was duly sworn.)

The CHAIRMAN. Mr. Slade, you were brought before the Judiciary Committee of the House of Representatives, some days ago, when the committee was investigating the charges against United States Attorney H. Snowden Marshall. At that time you filed a part of the charges, together with your brother who is a lawyer and a member of your firm. You advised the committee at that time that you would furnish the names of the witness that would be able to estab-

lish the truth of each of those charges. Up to this time you have not furnished the committee with this list of names. When may the committee expect it?

Mr. SLADE. I only asked the committee to give me a reasonable opportunity. I have been very busy and have also had a very bad attack of grip and was laid up. The names of the witnesses that I promised to the committee, together with a statement of what they will testify to, is being worked on now.

The CHAIRMAN. How long will it be before you can furnish the list?

Mr. SLADE. I ask the committee only to give me four or five days. Within that period I will be able to submit the names of the witnesses, and a narrative form of statement as to what they will testify to. I should have been very happy to say that up to now I have felt that the matter is of such importance that I want to put it up in such a way that it will serve the committee to the best advantage. I do not want to delay this matter. I want that the committee should receive the information at the earliest possible date that I can give it. I only ask for four or five days within which to furnish the statement.

The CHAIRMAN. Has the indictment against you and your brother been tried?

Mr. SLADE. No.

The CHAIRMAN. Has it been called?

Mr. SLADE. It has not.

The CHAIRMAN. Is there any other indictment pending elsewhere against you or your brother?

Mr. SLADE. The indictment is against my brother, but not against me.

The CHAIRMAN. Against which brother?

Mr. SLADE. Maxwell Slade.

The CHAIRMAN. Where does he reside?

Mr. SLADE. Brooklyn, N. Y.

The CHAIRMAN. What is he charged with?

Mr. SLADE. That grew out of the matter with which James W. Osborne was connected.

The CHAIRMAN. What is the indictment for?

Mr. SLADE. I will tell you about that. We had a client named Harrison. Mr. Harrison was in business of buying and selling sails and manufacturing sails for boats. I believe it was in the early part of July that one Fitzpatrick was apprehended and he and his driver were charged with having stolen goods in his possession. Harrison came over to our office and asked us to take up the matter, and we told him that we could not do it—that we did not defend these kind of cases. We told him that we did not take criminal matters in the magistrate's court. We asked for the name of the attorney who represented Fitzpatrick, and the attorney called in and discussed the matter with him.

Mr. Harrison then brought Fitzpatrick into our office and my brother asked him about the conditions under which he was arrested, and also if he had given the facts to his lawyer in regard to his entire case, and also asked his lawyer, if he had no objection, if we would go into the case and dispose of the case in court. That very afternoon his attorney came in to see us. The trial was on the 21st of July, I think. I am not certain about the date. The hearing was had and there was some doubt in the judge's mind as to whether he could

hold this man, but he felt that he should hold him over for the grand jury. That was the last we heard of the case.

I think four or five or six months thereafter the Harrisons were indicted for an attempt to give money in connection with the matter. My brother was telephoned to and he went down to see Harrison to arrange bail. While there he was informed by the officer that the officer had a warrant for his arrest for the same thing. My brother thought he was joking at first, but told him that if he had a warrant he would be very glad to go with him. When the Harrisons got out we went to Harrison and had a talk with him and asked him what there was to this charge about giving money. We told him that there seemed to be something about this charge that Fitzpatrick was given \$200 by Harrison. Fitzpatrick told Harrison that he, Fitzpatrick, could get them out of this case, because he was acquainted with a leader in the district. He said that if he would give him money he could get him out of the case. He said he was acquainted with the leader of his district, who could arrange the matter.

Mr. GARD. What is the name of this man, this leader?

Mr. SLADE. I do not know his name. He is a Democratic leader. We told him that in view of the fact that we had been his attorneys for such a long period we ought to have known what the situation was; we ought to have known what the facts were before going into the case. We knew nothing at all about the case before that. We were not in the case at that time. The money was never passed by us or in our behalf or with our consent or knowledge. That was handled by Mr. Harrison in his own behalf. We told Mr. Harrison we did not want to appear for him in connection with his criminal charges. We told him that we were not his attorneys in that case and that we wanted him to go to his own lawyer and state the facts. We told him that if he had acquainted us with the true state of the facts in the first place we would never have acted as his attorneys. We told him that we could not appear in the matter and that he should employ other counsel. He employed an attorney in Brooklyn by the name of Good, I think. Paul and William Harrison told him all the facts and gave him a complete statement of what occurred, and then Mr. Harrison came up and dictated a long statement, which I will be glad to submit for the consideration of this committee.

The CHAIRMAN. What is your brother indicted for?

Mr. SLADE. He is charged with attempting to give to this man \$200 for the purpose of procuring some sort of change. My brother is charged with giving \$200 to Fitzpatrick.

The CHAIRMAN. What is this district attorney's name in Brooklyn?

Mr. SLADE. Mr. Cropps.

The CHAIRMAN. What is his politics?

Mr. SLADE. I really could not tell you.

The CHAIRMAN. Don't you know he is a Republican?

Mr. SLADE. He was not elected on the Republican ticket. I think he was also indorsed by the Democrats. You could not really say he was either one. I think he is a very honorable gentleman.

The CHAIRMAN. He is attorney for the State?

Mr. SLADE. Yes, sir; he is the prosecutor.

Mr. NELSON. Do I understand you to mean that this affair grew out of the former one you mentioned?

Mr. SLADE. I believe so. In our investigation we found that Mr. Fitzpatrick belongs to a gang on the East Side. He is known as a forger and a thief. He is well known in the district around there, and we have conceived—we may be wrong—that this was part and parcel of the same scheme, because the committee can see for itself that the proposition is ridiculous on its face. The first time we saw the man we did not know him. We had never seen him before.

Mr. GARD. We are making rather a long record here.

The CHAIRMAN. Yes.

Mr. SLADE. I just want to explain.

The CHAIRMAN. We do not want to go too far afield.

Mr. SLADE. May I explain it off the record?

The CHAIRMAN. Yes.

(Thereupon Mr. Slade made some further remarks, which the reporter was directed not to record.)

Mr. GARD. Has there been any finding since you were here in the matter of Judge Hough?

Mr. SLADE. Hough is supposed to be a witness.

Mr. GARD. Is it a matter of record?

Mr. SLADE. Judge Hough is a witness.

Mr. GARD. There has been no determination of the matter?

Mr. SLADE. No determination yet. They served me with a process to appear before Willis MacFarland, and I said at that time——

Mr. GARD (interposing). When was that?

Mr. SLADE. I think it was last week—Wednesday or Friday, I could not tell which, but it was last week. Then, in obedience to the subpoena served on me, the process served on me, I appeared here. I do not know the purpose for which they called me. This is a charge against practically the office of Slade & Slade. I would like to have a specific charge made, so I may have a right to produce witnesses and make a showing to the contrary. That is the point I made. The present condition of the proceedings are such that this is an ex parte proceeding. I wanted the right to produce witnesses and cross examine witnesses produced by the other side, and the right to appear by counsel.

The CHAIRMAN. The only thing under investigation is as to whether you yourself, as a member of your firm, corrected or changed a record of the court involving a bill of exceptions.

Mr. SLADE. That may be the impression, but that is not the fact.

The CHAIRMAN. Is not that what they are investigating for, to find out the facts?

Mr. SLADE. They are not investigating me. I might answer "yes," but not as to myself.

The CHAIRMAN. Whom are they investigating?

Mr. SLADE. That is what I am trying to find out. Judge Hough is going to be a witness in the case. Willis MacFarland was appointed to act in the case. He had appointed Willis MacFarland in many cases, and he has acted as master in chancery there.

The CHAIRMAN. MacFarland is the one appointed to investigate the facts?

Mr. SLADE. Yes; that is all. He is a very noble gentleman.

The CHAIRMAN. And he will report his findings to the court?

Mr. SLADE. Yes.

The CHAIRMAN. He has not yet made a report?

Mr. SLADE. No. We have not testified. My brother has not testified. We have produced no witnesses.

Now, gentlemen, I am a total stranger to the committee. I want to say, Mr. Chairman, that we did not make these changes nor were those changes made after Judge Hough signed the record. I have a great respect for my wife, and I do not want to bring her in, but at the time in question she was with me. She knows about it. The changes made were made prior to the time that Judge Hough signed the bill of exceptions and not subsequent to the time.

Mr. NELSON. The chairman has brought out the fact that your brother was indicted in Brooklyn, and you said that that was inspired by the same motive—meaning Mr. Marshall?

Mr. SLADE. Not Marshall. That was the Osborne matter.

Mr. NELSON. Osborne?

Mr. SLADE. Yes.

Mr. NELSON. Have you anything in the way of proof in regard to that?

Mr. SLADE. I could not submit proof, but I do say this: Knowing as we do that he tries a good many cases there, and has a friend in the district where Fitzpatrick lives, he probably got hold of this man and induced him to make this false charge.

Mr. GARD. I do not think we want to go that far afield. It is not connected with Marshall?

Mr. SLADE. No.

The CHAIRMAN. We will rely on your word to the extent that you will give us the names of these witnesses within the time you have specified.

Mr. NELSON. We want you to give us the names of witnesses that will give us the facts, and then we will go into the matter.

Mr. SLADE. I will name you all the witnesses I have got and give you a statement as to what they will testify to.

Mr. GARD. Will you give us any more than are on this list?

Mr. SLADE. Yes; I expect there are some more. This I got up hurriedly.

Mr. GARD. Are any of them New York people?

Mr. SLADE. There are two that are in New Jersey.

Mr. GARD. Two in New Jersey?

Mr. SLADE. Yes. May I ask the committee if I am limited as to time in which to submit this?

The CHAIRMAN. We only make the limit that you yourself have made. You said you only wanted four or five days.

Mr. GARD. We can give him a week.

The CHAIRMAN. Yes; we will give you a week.

Mr. SLADE. I may submit it in installments, and I will submit as many as I can within the limit I placed myself, and then I will submit the rest of them. I assure the committee of my desire to submit these names and a statement of what the witnesses will testify to just as fast as I can. I am now engaged on the matter of Charles Bright. Martin W. Littleton is in the case with me.

The CHAIRMAN. We will expect you to submit the list within a week.

Mr. SLADE. Very well.

The CHAIRMAN. If there are not other questions by members of the committee, we will adjourn.

(Whereupon an adjournment was taken.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Wednesday, February 9, 1916—10.30 a. m.

The subcommittee this day met pursuant to adjournment.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson.

Mr. CARLIN. Mr. Clerk, will you call the names of the witnesses who were summoned before the subcommittee for this morning?

Mr. RUSSELL. Martin Manton?

Mr. CARLIN. He was excused until Friday.

Mr. RUSSELL. Louis S. Levy, Alexander Gilchrist, jr., William Leary, Julius Mayer.

(Response was had from Mr. Levy, Mr. Leary, and Judge Mayer.)

Mr. CARLIN. Let those present be sworn.

(Whereupon, Messrs. Mayer, Leary, and Levy were duly sworn by the clerk.)

Mr. CARLIN. I wish to say to the witnesses that we have decided to recess at this time until 1 o'clock, at which time you will please return here.

(Whereupon, at 10.45 o'clock a. m., a recess was taken until 1 o'clock p. m.)

AFTER RECESS—1 O'CLOCK P. M.

The subcommittee reconvened at 1 o'clock p. m.

Mr. CARLIN. All witnesses except Judge Mayer will please retire from the room.

(The witnesses all retired from the hearing room.)

TESTIMONY OF HON. JULIUS M. MAYER, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK.

Mr. CARLIN. Will you please give your name, residence, and your office?

Judge MAYER. My name is Julius M. Mayer; 268 West Seventy-third Street, New York City; United States district judge for the southern district of New York.

Mr. CARLIN. Judge Mayer, have you read the charges preferred by Representative Buchanan against H. Snowden Marshall, United States district attorney for the southern district of New York?

Judge MAYER. No; I have not, Mr. Chairman.

Mr. CARLIN. You are a Federal judge?

Judge MAYER. Yes.

Mr. CARLIN. Sitting in the southern district of New York?

Judge MAYER. Yes.

Mr. CARLIN. How long have you been such?

Judge MAYER. I was appointed by Mr. Taft in February, 1912, and took the oath of office early in March of that year, so that I shall have been shortly on that bench for four years.

Mr. CARLIN. Are you familiar with the provisions of chapter 1, section 18, of the Judicial Code, as amended by the act of October 3, 1913, which provides for bringing in judges to the southern district of New York?

Judge MAYER. I think so.

Mr. CARLIN. Will you please explain to the committee the methods in which that is operated?

Judge MAYER. The bringing of the judges to the district?

Mr. CARLIN. Yes.

Judge MAYER. The district judges conduct a correspondence preliminarily through Judge Hough, the senior district judge, the purpose being to invite practically every district judge in the United States to come to our district, if, of course, he is willing to do so; and, secondly, if the business of his district permits. That first letter that is sent through Judge Hough, who has had the detailed charge of the matter for the four of us, is in a sense an informal letter for the purpose of ascertaining whether the judge from another district is willing to come and is so situated that he can come. I am unable to say to you, but Judge Hough may do so, exactly who have been invited. I think invitations did not go to a few men who, for instance, we had heard were perhaps men very well on in years or men not in good health; but with that exception the invitations have been quite general from coast to coast and from the North right down to the most southerly States.

If the judge thus invited indicates that he is able to come, then the procedure provided for by the statute is complied with, and that is we must, as you know, get the consent of the senior circuit judge of the circuit whence the man is coming; and a certificate or designation, or whatever it may be called under the act, is signed by our senior circuit judge. After the routine of the statute has been complied with, then the visiting judge, as we call him, comes to the district and performs the duties of a United States district judge in the southern district.

Mr. CARLIN. What was the practice prior to the passing of the statute?

Judge MAYER. We were powerless then to have anyone from outside the circuit; that is we had prior to that time the services, besides ourselves, of judges in other parts of the circuit, our circuit taking in all of New York, Vermont, and Connecticut, and of course if the committee should desire, I would be very glad to tell them how it was that that act came to be suggested to Congress.

Mr. CARLIN. You may do that.

Judge MAYER. When I came to that bench, we were considerably behind in several calendars. We have a large amount of bankruptcy business, and it is necessary for one judge to sit in what we call the bankruptcy motions and ex parte side. When one of us sits there, he has the Monday bankruptcy calendar, which is usually a very long calendar, having to do with many matters, and he has the Friday general motion calendar, upon which there are motions very frequently of large importance, equivalent almost in importance to a final hearing, more especially in motions in patent and copyright and other equity cases, for preliminary injunctions.

During the week, owing to the large amount of administrative business, which we have in that district, one judge must be always available for the signing of orders, the hearing of applications of various kinds, and very frequently for contested matters that come up hurriedly before the judge requiring prompt disposition. For instance, I will give you one illustration which will suffice:

Suppose that a sale has been ordered or threatened in bankruptcy, we will say, for to-morrow morning. A creditor or some other person properly interested comes in and desires that that be restrained. That involves instanter motion, one may say, and the result, to put it briefly, is that one judge is necessarily occupied with that part of the court all of the time—not the same judge, but one judge, as we go around, in turn; and that judge of course is only available for that work that month.

The admiralty business in our district is a very important branch, owing to so many matters occurring in and about the waters of New York. The equity business is undoubtedly the largest of any district in the country, by a great deal the largest, due to the very considerable number of patent and copyright cases, in addition to other, one may say, cases of general jurisdiction.

Then on the civil jury side of course we have those actions which are cognizable between citizens of different States, where the jurisdictional amount is sufficient, plus the kind of actions which are peculiar to the United States courts, such as the trial, we will say, of a suit arising under the national pure-food act, and other peculiarly Federal matters, subjects of consideration by the Federal courts.

On the criminal side, prior to my coming there, there had been a considerable number of very long cases, and after I got there, there were many, I should think, long cases. The case against Hawthorne, Freeman, and Morton, started before Judge Hough in November of 1912, I think it was, and during the progress of that he fell ill, and it was continued by me, lasting from November until the middle of March. The court files are full of the story of many long cases on the criminal side, arising under the statute in respect of using the mails to defraud, complicated customs cases, and, in a word, cases which have on many occasions occupied the attention of one judge for a long period of time.

With four judges, you see, we would have one judge tied up for a long criminal case; we every so often would have one judge tied up for a long period of time in civil litigation; then one judge attending to this part that I have described as the bankruptcy and bankruptcy motion and ex parte part, and some part of the court from time to time had suffered because we would have to skip a period of time during which we could not have whatever it might be—the admiralty calendar or the equity calendar or a calendar of the civil jury part.

In passing, I might call to your attention also that a tremendous amount of work had accumulated on the equity side prior to the new equity rules of the Supreme Court, and this work had accumulated under the old system by which tremendous records were made taking the testimony out of the court.

That was the condition of affairs after I came into the court and for sometime after I came to the court, notwithstanding that every judge is doing the best he could, and that the records of the court will show that, except for the illnesses that may occur, the judges in that district sit almost continuously except during the summer vacation.

Mr. CARLIN. How long does the summer vacation last?

Judge MAYER. We divide the summer vacation. We consider the summer vacation as July, August, and September, to be divided by

the four of us, with one judge on duty all of the time—that is, one judge is there, and when his turn for vacation comes he is replaced by another judge, and so the matter goes. There is always one southern-district judge on duty in the southern district all the year around. As I say, we consider the vacation as July, August, and September, dividing that up among ourselves as equitably as we can.

In that condition of business this bill, which, I think, was proposed by Senator O’Gorman, came into being, the bill, as I understand, first providing for the same system of allowing a United States district judge to go anywhere in the country; but in the course of the progress of that bill the Congress limited it to our district. Since these gentlemen from outside have come, we have gotten our calendars, considering the amount of work we have to do there, into a really very remarkable condition. We have our business as nearly up to date as is possible in any court in this country.

Mr. CARLIN. Does it ever happen that one judge starts a case and another has to finish it?

Judge MAYER. It happened just once, and that is the instance I gave you.

Mr. CARLIN. In the Hawthorne case?

Judge MAYER. Yes. That was under very peculiar circumstances. Both sides, the Government and the defendants, had presumably gone to a great deal of expense and effort, when Judge Hough was taken, unfortunately, with this very grave illness, which required that he should go out to the Mayo institution, in Minnesota, to be operated upon. The then United States district attorney, Mr. Wise, and the counsel for the defense came to me and begged me to take up that case. I had my doubts as to whether one judge could succeed another, and so expressed them. But after conferring with my associates and after having the urgent request of both sides, and in view of all the time and money and effort that had been spent, I consented to undertake it, and I finished it.

Mr. NELSON. It was done by consent of both parties?

Judge MAYER. By consent of everybody. The three men were convicted—not all on the same counts, but they were convicted. Hawthorne and Morton did not appeal. They finished their sentences at Atlanta. But Freeman, whom I had sentenced to the major and more serious imprisonment, sued out a writ of error, and our circuit court of appeals held that the Constitution contemplated that a criminal trial should be composed not only of the same jury but of the same judge throughout, and reversed on that ground in an opinion by Judge Rogers, which was concurred in by his associates; so a new trial was granted to Freeman, which has not yet taken place. That is the single instance. It was a new question, which had not been passed on anywhere. Of course, there have been many cases of a trial being finished with 11 jurors, or something of that character, but none which had brought up this point, as I understand it, as to this change of judges. That is the single instance where that occurred, and it occurred under these circumstances which I have related.

Mr. CARLIN. Judge Mayer, what, if anything, does the district attorney or his office have to do with the invitation extended these visiting judges?

Judge MAYER. So far as I know, nothing; I mean it may possibly be that he might say to Judge Hough that he has heard that Jones, Smith, or Robinson is a strong and capable judge, or something of that sort; but, so far as I know, nothing at all. Judge Hough has kept, because of his being a very careful man in such regard, a complete file of the correspondence with the various judges.

If it will be of any service to you, in that connection what happens is this: The judges that we have invited—for instance, we have had Judge Van Fleet, from as far west as San Francisco; we have had Judge Russell, who, I think, was a Member of this House at one time, from Texas; Judge Sheppard, from Florida; Judge Cushman, from the State of Washington, and so on, and from the Middle West, and from all over. In the majority of those cases these men preferred to go into the criminal part, for the reason that then they do not take away with them cases for further consideration. There have been exceptions to that rule. Judge Rose, of Maryland; Judge Sanborn, of Wisconsin; Judge Sheppard, of Florida; Judge Hunt, of the Commerce Court; and Judge Mack, of the Commerce Court, have sat in other parts of the court; and there may be some others that I can not recall at the moment. But, you see, we do not feel at liberty, as a matter of courtesy, to ask a man, as a condition of his invitation to coming on to New York, to take a heavy case on the equity side, because the chances are he has plenty to do at home. Some of the men, I think, rather fear—I will not say “fear,” but I mean prefer—not to go into civil jury cases, because they are not familiar with our New York code of the civil procedure, and, of course, we are bound to follow the New York law on that side of the court. The criminal law, of course, is the same in New York as it is anywhere else in the Federal courts, and these gentlemen prefer to go to the criminal side; but they may not only select to come elsewhere, but we are perfectly delighted when any of them will take up equity or admiralty or any of the other branches, which frequently, as I say, requires that a man shall take away with him a great bundle of work or more or less work. Judge Smith, of South Carolina, it occurs to me, who is a very distinguished admiralty judge, has come up twice and sat in admiralty.

Mr. CARLIN. How much of your time was expended, prior to the passage of this act, in hearing of criminal cases?

Judge MAYER. I can best answer that by this statement, Mr. Chairman: In the division of parts between the four men, excluding July, August, and September, one man gets three months of some part and two months of the other parts. I think, if we exclude these long cases that I speak of, that I sat, say, in actual trials alternately perhaps three months and a fraction and two months and a fraction. That is, one year I would sit three times—

Mr. CARLIN (interposing). Do you feel that you serve your full share in the trial of criminal cases?

Judge MAYER. I think so. I am very glad to serve anywhere.

Mr. CARLIN. Has anything occurred in your experience as district judge in the southern district of New York that leads you to believe the reason you have not been permitted to preside more frequently in the conduct of criminal trials is to be found in your refusal, if you made any, to allow the United States district attorney for the southern

district of New York to influence your judicial action in regard to criminal cases?

Judge MAYER. No; I can not believe that any such thing as that can be so, of course.

Mr. CARLIN. Has the district attorney attempted to influence your judicial decision in criminal cases?

Judge MAYER. Not in the slightest, except if by that is meant an urgent argument on the floor of the court room.

Mr. CARLIN. No; the charge is specifically made that he has done such things. That is the reason the question was asked.

Judge MAYER. No; the district attorney has personally appeared before me very rarely.

Mr. CARLIN. Have you any knowledge of any facts that would lead you to believe that in the selection of outside judges, either the Attorney General's office at Washington or the district attorney's office at New York has desired to cause or procure a discrimination in the assignment of such judges to conduct trials so as to discriminate against one or more of the resident judges?

Judge MAYER. I do not believe that for a second. Of course, the procedure that I have explained has resulted in a great deal more labor on the local judges, because we have had the heavy parts of court; and every one of us regards the criminal side—at least I do—as the easiest side from the judge's point of view. But we are very glad to have been able to do that in order to bring the court and its calendar up to the present condition.

Mr. CARLIN. What actually happens when an imported judge comes to New York, in the trial of a case? To whom does he report and who assigns him to work? How is that arranged?

Judge MAYER. I think there is no definite procedure. I think what usually happens is that he turns up at the marshal's office and the marshal brings him over and introduces him to one or more of the judges.

Mr. NELSON. You are using the word "marshal" as a title and not as the name of the district attorney?

Judge MAYER. I mean the United States marshal's office, the official's office. He goes and sits in the criminal part and lunches with us practically every day. What has happened—I think I am not going beyond the point in saying this—is that every now and then, when some puzzling question will come before some outside man, he will very often ask us what is the practice of the district, or what is our point of view on some question of law, more especially, however, on some question of practice. For instance, a recent illustration is this: I think I was told that Judge Clayton charged the grand jury that a stenographer could not be permitted in the grand jury, which is the rule, as I understand it, in his circuit, because Congress has made no provision for a stenographer. The ancient rule in our circuit has been to the contrary, and in a case which was recently tried before me in which that subject became a test, our circuit court of appeals upheld the proposition that you can have a stenographer in the grand jury. The seventh circuit, I think, has held to the contrary, and there is great divergence of opinion throughout the country on that subject.

Mr. CARLIN. Did they hold the stenographer is there for the purpose of taking minutes of the testimony, or for the assistance of the grand jury?

Judge MAYER. Merely to take minutes of the testimony. There is a very apt illustration of the kind of thing that a judge from another district would confer with us about, to find out what is our practice. It is entirely likely that the same kind of thing happens in the court room. It is entirely likely, I suppose, that a judge might ask or be told by the staff of the United States attorney's office what was the practice in the district on some point or another.

Mr. CARLIN. Do you believe, from your experience and observation, that the importation of judges from the outside gives to the Government any undue advantage in the trial of its cases?

Judge MAYER. I do not think so. I do not see how it can. If of course it were to be said that a judge, by his judicial course, had indicated an intellectual tendency toward one side or another, and that particular judge in some particular situation were on hand, I suppose that might suggest such a thing; but I have never seen anything of the kind.

Mr. CARLIN. Do you think the operation of the practice of importing judges is in effect to give the Department of Justice power to secure an influence or control over the decisions and official acts of the imported judges?

Judge MAYER. I do not think so, for the reasons I have indicated, because there are so many preliminary steps before the judge comes there.

Mr. CARLIN. Have you any reason to believe that the intimacy of the imported judges with the district attorney's office is any greater than that of the local judges?

Judge MAYER. I can only say I have no reason to believe it. Personally I know of no intimacy beyond the fact that when a man sits in criminal term, whether he is local or an outside man, he has these same people before him day after day.

Mr. CARLIN. From your experience and observation, would you think that the district attorney's office would have any greater opportunity to unduly influence an imported judge than it would a local judge?

Judge MAYER. I do not think so, unless you are going to assume that the imported judges are not as immune as we think we are, and I can not assume that, because my observation has been that the men that we have had there from all parts of the country are men of character and ability, selected presumably, and more especially in the least settled parts of the country, after the most careful investigation. I think you would all be very proud of the men that come from all parts of the country, who show ability and learning, and who show character; and I can not imagine for a second that any United States attorney or anybody else can influence these men. Of course, as I say, I have sat in other parts of the circuit, and I naturally will take the word of the prosecuting officer as to some practice; I mean some point of practice.

I do not pretend to know the law of Vermont, for instance. If there is some point or another that is new to me—for instance, here is a little bit of a thing, but it illustrates: We say the man who is called first is the foreman of the jury. It is the accident of the pulling

of the name out of the box. When you go to Connecticut, the jury, when they retire, select a foreman. That was news to me. I mean all those little things. In any real thing, in any big thing, I should be greatly amazed if anybody could influence an outside judge any more than he can a local judge.

Mr. CARLIN. Do you know or have you any reason to believe you have ever imported an outside judge, or that there has been a local judge that the United States district attorney's office has attempted to influence?

Judge MAYER. I know of none.

Mr. CARLIN. I mean improperly, of course.

Judge MAYER. I know of none.

Mr. CARLIN. Do you know of any instance where any particular judge has been imported into New York at the suggestion of the district attorney other than through the rule which you have just stated is the method of securing their attendance?

Judge MAYER. There is only one instance that I know of, and it was not outside of the circuit, which represents what I think is a perfectly proper thing. This was in this very Freeman case, which was a case that may take some time to try. The feeling was that if it was possible, it would be desirable to get some outside man to try it. Judge Hough could not try it again, nor could I. I mean that while we could try it it would be much fairer to everybody concerned to have a fresh mind. I think I did hear that Judge Howe, of Vermont, would be willing to come at any time when his engagements were such that he could try it. I do not suppose that anybody objects to that. I do not suppose the defendant, any more than the Government, would object to that. That was not to get a particular man. That was to get somebody who had the time.

Mr. CARLIN. I think I can sum this investigation up in one question: Do you know of any improper influence or effort made by the present district attorney, either in the securing of a judge or after the securing of a judge, to influence the action of any court, either that of an imported judge or a local judge?

Judge MAYER. I know of none.

Mr. CARLIN. Will you tell us what is the method of selecting the grand jurors in the Federal court of New York?

Judge MAYER. The statute puts that in the hands of the clerk of the court and the commissioner of jurors. The statute also provides, if my recollection serves me, that the commissioner of jurors must be of a different political party from that of the clerk of the court. When I came into the court there was a commissioner of jurors who had served a great many years, and he died. The compensation to the commissioner of jurors, incidentally, is \$5 a drawing, and there can not be more than three drawings a month, so you see it is a mere trifle from that standpoint. As the clerk of our court was a Republican, we looked around to get a good clean high-grade man—a pretty difficult task to accomplish when you think of the compensation; but we did succeed in getting Mr. Edward L. Patterson, the son of Edward Patterson, who was for many years a justice of the supreme court, with us and for a number of years the presiding justice of the appellate division. The clerk, who will be here, will tell you how they get the names. They practically get them from every source they can, as I understand it.

Mr. NELSON. You said that, as the clerk was a Republican, you were looking for a high-grade man?

Judge MAYER. I meant quite outside of the clerk; I did not mean another high-grade man; but what I was getting at was that we wanted to get the kind of man for commissioner of jurors whose character would be satisfactory, that there would be no question at all about him.

Mr. NELSON. What did his being a Republican have to do with it?

Judge MAYER. The statute requires us to get a Democrat. The clerk being a Republican, the statute says we must get a man of the opposite political party. I confess it was news to me. I did not know there was such a statute. So we had to get a Democrat, you see.

Mr. NELSON. I thought that probably was the reason.

Judge MAYER. Yes; the statute requires we shall get a Democrat, and as I say, we looked around for the best man we could find who would be willing to do this thing, and we got this gentleman, who is a Democrat and whose father I have no doubt some of you know all about. Everybody here must know about Mr. Justice Patterson.

These men—the clerk can tell you this better than I—get the names from every source possible. They take the directory and the telephone book, and they get the names from every possible source. The grand jurors and the petit jurors are all drawn by lot. There is not a selection of the grand jurors and a selection of the petit jurors, as there can not be under the Federal statutes. One set of names is picked by lot, and those are the grand jurors. Another set of names is picked out by lot, and those are the petit jurors. I have seen myself, since I have been there—I can not give you the names, but I remember faces pretty well—some men on a petit jury that I remembered were on a grand jury perhaps two or three years before. We have not any standing grand jury as is the case in the State system. That is how that is done.

Mr. CARLIN. What power of process has the district attorney to compel the attendance of witnesses before him for examination prior to their testifying before the grand jury?

Judge MAYER. That is a very mooted question. The district attorneys have been doing that apparently ever since the beginning of time. Personally, I am opposed to it, always have been, and always will be. I am opposed to any such practice if it exists in the State courts, and I am opposed to it in the Federal courts; but it has been done.

Mr. CARLIN. Do you know of any authority of law for that?

Judge MAYER. I know of none.

Mr. CARLIN. Who signs the process which is issued for witnesses of that sort in that way?

Judge MAYER. I do not know.

Mr. CARLIN. The court alone has the power to issue process; is not that true?

Judge MAYER. I have forgotten whether it is attested in the name of the court and issued over the signature of the clerk, or not.

Mr. CARLIN. It often happens that these witnesses so summoned are imprisoned as a result of or during the examination by the district attorney, does it not?

Judge MAYER. You mean actually imprisoned?

Mr. CARLIN. Yes, sir.

Judge MAYER. I do not recall any such instance.

Mr. CARLIN. Have you ever had occasion recently to direct the release of an old man who was summoned under those circumstances?

Judge MAYER. Yes; I did.

Mr. CARLIN. Tell us about that, please.

Judge MAYER. I was sitting in a part of the court—I have forgotten what part it was, though I remember the room perfectly—when an attorney came in and said that a man was being detained in the office of the United States attorney under examination by one of his assistants, and that his son, I think, wanted to speak to him and wanted to have an opportunity to be advised by counsel. I thought the representation was such that it required immediate action. There was not any time, as I viewed it, to draw elaborate papers, and so I issued what somebody called an oral writ of habeas corpus, and I required that that witness and the assistant in charge be brought before me forthwith. They came. The assistant said that this man was a voluntary witness and was in the middle of giving information which the Government regarded as of value in certain investigations having to do with bankruptcy frauds. I may be a little off in my details, but I am giving it to you the best I can. In the court room at the time was a young man who had been in my law office and who is now the partner of my former partner—a very earnest and high-grade and reputable young lawyer. So I said it was not possible for me to decide what were the merits of this matter; that I did not propose to have anybody held against his will without proper process to answer any questions or anything of that sort; and that I would assign this young man, if he would be good enough to act—because it involved no compensation—and have him go over the situation with this old man in the bankruptcy case, and then advise the man what were his rights, and tell him that he could refuse to answer within his constitutional rights, and that whatever was right to be done should be done under the guidance of this attorney that I assigned. The matter was proceeded with on those lines. The ultimate result I confess at this moment I do not recall, but my designee did what I asked him to do. The young assistant to the United States attorney insisted that this witness had come voluntarily and was very anxious to inform the Government of all that had occurred, in order that the witness himself might be relieved by virtue of that information. That incident I remember well.

Mr. CARLIN. Do you know of any instance where the district attorney's office attempted any improper influence in the selection of either the grand or petit jury by the commissioner of jurors?

Judge MAYER. No. That I never even heard of. There was a case before this present incumbent's time, which did not involve the United States attorney.

Mr. CARLIN. We do not care to go back to that. Has anyone ever brought to your attention any charge of that sort against the present incumbent?

Judge MAYER. None. That I never heard of.

Mr. CARLIN. Is it the practice to sign grand jurors' subpoenas in blank by the court and turn them over to the district attorney's office?

Judge MAYER. I am quite sure it is not. I have no recollection of ever doing it myself, and I do not think any other judge would. In fact, I would not think of doing it. If I ever did it, it would be a surprise to me.

Mr. CARLIN. What right has the district attorney to change the status of witnesses who have been subpoenaed before the grand jury and have them subpoenaed to appear before his office?

Judge MAYER. I do not understand there is any right.

Mr. CARLIN. Is it the practice to do that?

Judge MAYER. I know of no instance excepting this one which I have spoken about in which there was this dispute or claim of being detained.

Mr. CARLIN. Judge Mayer, I want to ask your knowledge, if you have any, with reference to the relation between the district attorney's office and the law firm of O'Gorman & Battle. Mr. Marshall is not a member of that firm now, is he?

Judge MAYER. No.

Mr. CARLIN. What is your knowledge or your impression or what is the general impression among the members of the bar at New York as to whether there are any improper relations between those two offices?

Judge MAYER. I personally am as confident as I could be of anything, as that I am on earth, that there can not be any improper relation. Mr. Gordon Battle is a man of the very highest character. He is a man who has been trying criminal cases for many years in all the courts. One of the earliest and very important criminal cases tried before me was tried by him. From the conduct of matters in cases in which he has appeared since Mr. Marshall came to the United States attorney's office, so far as they came before me, I have found the same attitude toward matters coming from that office as from any other. In fact, in a matter that I consider of small consequence that was before me not so long ago a very bitter and determined effort was made by the assistant opposed to Mr. Battle to have the court impose much heavier sentences than the court did. I do not think there is anything in that at all.

Mr. CARLIN. Do you know of anything of your own knowledge or from information that has been brought to you with relation to the official conduct of Mr. Marshall, the United States district attorney, that you consider discreditable?

Judge MAYER. Nothing whatever.

Mr. CARLIN. Was the indictment against Messrs. Buchanan, Schultheis, Martin, and others found in your court?

Judge MAYER. Do you mean when I was presiding?

Mr. CARLIN. Yes.

Judge MAYER. No. I think Judge Clayton was presiding, but I am not sure—no; I think that grand jury was sworn in by Judge Shepard, the indictment received by Judge Learned Hand, and the gentlemen named arraigned, I think, before Judge Clayton. That is my recollection of the history of it. Nothing whatever came before me.

Mr. CARLIN. Was the late Slade indictment found in your court?

Judge MAYER. You mean before me?

Mr. CARLIN. Yes.

Judge MAYER. No; I have not had a single thing to do with that case.

Mr. CARLIN. What is the general reputation, if you know, of Mr. Marshall among the practitioners at the bar and the courts there as to his character and professional standing?

Judge MAYER. I think Mr. Marshall is regarded as a man of absolute uprightness, of the highest ideals, a lawyer of real ability; and, speaking now for myself, I am frank to say that, much as I have respected some of his predecessors, I think better of him than I do of some of them, for one reason, in addition to character, ability, and the like, which they all possess, and that is that he does not exploit himself in the newspapers, and that he does not, so far as I can see, appeal for personal advantage through spectacular methods. I have no hesitation in saying before this body or any other that I regard him as a high-minded, upright man, utterly uncontrollable by anything on earth except what he thinks is right. I have known him many years, both as a lawyer in our relations as lawyers, and since he has been an official and I have been an official. If here and there some inapt or unwise thing has been done by some young assistant, you will find that has been done through zeal or mistaken notion that these young assistants have when they first get the responsibility of being assistant prosecuting officers. I really respect him very much, and I count him as one of the men that I know who would not consciously do anything that went contrary to his opinion of what is just and right. He doubtless makes mistakes, like the rest of us.

As I say, I do not hesitate to say to you gentlemen, as I have often said in the presence of others, that one thing that appeals to me about him more than anything else—because I assume the other qualities in a public officer—is the fact that, as the expression goes, he does not “play to the galleries.” Of course, certain kinds of cases become the subject of newspaper exploitation by the very nature of the case, and you can not help that; but Mr. Marshall is not the kind of man who is looking for his own vainglory. I can not imagine any reason why he took his present position, excepting for the honor involved, because he enjoyed a very lucrative practice and was regarded, before he came here, as a lawyer of real ability, especially as a trial lawyer.

Mr. CARLIN. Was the Rosenthal indictment pending before you?

Judge MAYER. No. I can help you on that only to this extent: Rosenthal pleaded guilty before Judge Martin, who is now deceased, and who was the judge from the Vermont district and has for many years sat from time to time in our district—before my time and during my time.

Mr. CARLIN. He is now dead?

Judge MAYER. Yes; Judge Martin died a year ago or something of that sort.

Mr. CARLIN. Judge Mayer, I assume that, having been appointed by Mr. Taft, you are not of the same political faith as Mr. Marshall?

Judge MAYER. I am not.

Mr. GARD. May I ask a question or two of you, Judge Mayer?

Judge MAYER. Certainly.

Mr. GARD. I understand there are four district judges in the southern district of New York?

Judge MAYER. Yes.

Mr. GARD. Those are Judge Hand, Judge Sessions, Judge Hough, and yourself?

Judge MAYER. Judge Hough, Judge Learned Hand, Judge Augustus N. Hand, and myself.

Mr. GARD. Judge Sessions is not one of your judges?

Judge MAYER. No; he was visiting us from Michigan.

Mr. GARD. Since this new law went into effect, permitting judges to come there to the southern district of New York to assist in the trial of cases, have you personally had any criminal term?

Judge MAYER. Oh, yes. I held a criminal term just this last December that has gone by. I think I held criminal term last October a year ago.

Mr. GARD. Is it your practice to divide the criminal terms and the different branches of civil assignments?

Judge MAYER. Among ourselves?

Mr. GARD. Yes.

Judge MAYER. Yes.

Mr. GARD. Do you have three or more criminal terms a year?

Judge MAYER. Dividing the various parts of the court up among us four men, one man will get three terms of criminal and two terms of everything else this year, we will say, and next year another man will get three terms of criminal and two terms of everything else.

Mr. GARD. How many terms of criminal court do you have a year in the southern district of New York?

Judge MAYER. We have really 12 terms.

Mr. GARD. How many different grand juries do you have?

Judge MAYER. I am pretty sure we have 12 at least. Sometimes we have two grand juries running at the same time and sometimes we have more. This last year we had two grand juries—a morning grand jury and an afternoon grand jury.

Mr. GARD. Referring more immediately to the time since Mr. Marshall has been district attorney, can you give this investigating committee any idea of the class of criminal cases that are presented there?

Judge MAYER. Yes.

Mr. GARD. I wish you would do that, please.

Judge MAYER. The criminal side is a grind, you might say, in this respect: There is the current small business, which in many instances ends in pleas of guilty, like, for instance, the prosecution now under the Harrison law passed by Congress; pure-food violations, which were very great in number when I first went in the court, but, by virtue of a better understanding of the law, have been growing less and less, and also because, I think, the department has taken some remedies on the civil side; post-office clerks and other employees stealing or dealing with letters improperly, and so on. Then a great, great, many schemes-to-defraud cases, which are now gradually reaching their end—that is, not that there are not schemes to defraud from time to time, but the widespread schemes to defraud, when New York was a great center, are, by these constant prosecutions both before and since Mr. Marshall's time, beginning to simmer down. Those are cases that have taken up most of the time.

Then, customs violations, and, occasionally, but not so much as in other parts of the country, internal-revenue frauds. I should say off-hand that, outside of what might be called the petty criminal business, the two most prominent things the criminal side has to deal with in the last, let us say, seven or eight or nine years, have been the customs frauds and the schemes-to-defraud by use of the mails, plus, of course,

that great mass of criminal matter which arose out of the sugar frauds, which you doubtless recall. Those are the things. Of course, latterly have come up these matters arising out of the indictments relating to foreign commerce and war relations, and so on. That, of course, has been a very recent development, comparatively. I have one of those things pending before me.

Mr. GARD. Can you tell us of the development of the character of indictments in so far as conspiracy charges are concerned under the Sherman antitrust law? How many of those have you had?

Judge MAYER. Of course, there is the New Haven case, about which all of you know. Then there was the case—one phase of which I had before me—arising out of, I think, the paper-box industry or the paper-board industry. I have had, but not in Mr. Marshall's time, quite some cases arising out of the Hepburn Discrimination Act. There may have been some other Sherman law cases, and doubtless were, but I do not recall any at the moment that would come under my observation.

Mr. GARD. Is there a practice in the office of the present United States district attorney to make indictments for conspiracy covering blanket charges of crime?

Judge MAYER. There is this practice that has existed in the southern district from before my time: There is a practice for the grand jurors to indict not merely for the crime, but for conspiracy to commit the crime, you see.

Mr. GARD. That is the practice?

Judge MAYER. That has existed there I do not know how long, but long before my time. In other words, suppose a man is charged with the substantive offense—that is, a scheme to defraud by use of the mails. In almost every instance the indictment also is for conspiracy—of course, if there was more than one defendant—to violate that statute.

Mr. GARD. In other words, they have a twofold way of procedure—they have an absolute indictment charge of the direct offense and they assume that someone is connected with him, or, if the department thinks so, they present an indictment for conspiracy, a blanket charge covering the same offense or intended to cover the same offense?

Judge MAYER. Yes, of course, with the necessary allegation of overt act and all that. Those indictments have gone through the courts quite a good deal. The reason for that, of course, taking especially a scheme to defraud, is that very often those schemes are very ingenious, extraordinarily so; and a charge of the substantive offense only will sometimes not reach the situation because of the limitations of the law of evidence. Let me illustrate, if I may. I had before me recently a case right under this, I think, very beneficial Harrison law that Congress passed. The scheme these traffickers in these prohibited narcotics had worked out was of the most ingenious character, and if there had not been the opportunity that comes in conspiracy cases, I think these men might have very wrongly escaped. That form of indictment is pretty old in the southern district, and I presume is elsewhere.

Mr. GARD. Are these forms of indictment also used in connection with the general allegations of fraud or intentions to defraud the Government in importation cases and in bankruptcy cases?

Judge MAYER. I think so.

Mr. GARD. Then, as a matter of fact, it follows that there are a very considerable number of these so-called blanket conspiracy charges?

Judge MAYER. I should answer that by saying conspiracy charges. I mean I only do not like to include the word "blanket," because, of course, the conspiracy charge must be confined within the requirements of the law. But, answering the substance of your question, as I understand it, I should say yes.

Mr. GARD. The purpose I have been pursuing in this is to ask you frankly if there is any reason why the resident judges of New York, by reason of the fact of the presence of a large number of citizens in New York who may be charged with importation frauds and bankruptcy frauds, should ask that foreign judges come to the southern district? Is that a reason why foreign judges are asked to come there by the local or resident judges of the southern district?

Judge MAYER. Not the slightest; not the slightest. We have all had our share. Even since I have been in the court we have all had our share of facing those questions. As a matter of fact, so far as I am concerned, I am perfectly willing to serve in the criminal part of the court at any time, excepting that I felt it my duty, as my associates have, to do this heavier work in order to keep this work right up to the mark. I do not want to emphasize the importance of our court, but I do not think any of you gentlemen, and I do not think any member of the New York bar has any conception of the importance of the point that I have just suggested. For instance, we are dealing now with all these new scientific developments, with wireless telegraphy, with all the developments of electricity, and all that sort of thing. I tried a very important case last spring for six long weeks involving important wireless telegraphy patents, in which the whole scientific commercial world was interested. If we do not do it, somebody else has got to do it, and there is nobody to do it.

Mr. NELSON. Was a man by the name of Bauerlein involved in that case?

Judge MAYER. No, sir.

Mr. NELSON. Was it a case against the United States Wireless Telegraph Co.?

Judge MAYER. No; it was a patent case. It was a case between what are known as the receivers of the National Electric Signaling Co. and the Atlantic Communication Co. I do not think there would be anything come to your attention about it.

Mr. GARD. As I understand it, as a matter of fact, the judges that are brought in are assigned and have been assigned almost exclusively to the criminal docket of your court?

Judge MAYER. I should say the overwhelming majority. I will not be accurate about this, but Judge Sheppard, Judge Sanborn, Judge Rose, Judge Grubb, Judge Humphrey to some extent, and Judge Smith have sat in other parts of the court, but by far the great majority of these men have sat in the criminal side, and for the reasons I have stated.

Mr. GARD. There is one point in which I am personally very greatly interested. You have told us of this instance of this old man, whose name you did not give, whom you released by, you very aptly called, an oral writ of habeas corpus. Do you remember his name?

Judge MAYER. I can not remember, but I can find it for you very readily. I will be very glad to let the committee know.

Mr. GARD. I will be very glad to have a frank statement from you as to whether that is the practice of the district attorney's office in New York to issue process and bring men technically as witnesses before the district attorney or before any assistant in his office, for examination when the grand jury is not in session.

Judge MAYER. Let me say this, that the grand jury is in session practically all the time.

Mr. GARD. I mean taking them into the office for examination under the process to appear before the grand jury.

Judge MAYER. I am not clear, just by way of preface, in my memory, but that is a matter that can be easily ascertained, whether in this instance the man had come to the office or had received a subpoena. On that point my memory does not serve me, but whatever the fact is can easily be found out.

Mr. CARLIN. I understood you to say he was a voluntary witness.

Judge MAYER. Yes; but I do not know whether that was preceded by the actual service of a subpoena or not. The claim was made that whatever he was doing was by way of being a voluntary witness.

Mr. GARD. What I want to know in that connection is whether the district attorney issues a process of this kind to bring people into his office for examination, rather than to take them before the grand jury, or before he takes them to the grand jury.

Judge MAYER. I do not know. I am perfectly frank about it. This is the only instance that has been called to my attention.

Mr. GARD. Did not you say a few moments ago that was the practice of the district attorney's office? I so understood you.

Judge MAYER. No; I said I had understood, and meant to be entirely clear, that that practice had happened before Mr. Marshall's time.

Mr. GARD. Does it happen now? That is a thing in which we are interested.

Judge MAYER. Whether it happens now or not I would not have the slightest hesitation in telling you if I knew; but I do not know. What I wanted to make clear is that that has only been the practice in New York in the New York State district attorney's office, because you know I was years ago a judge of an inferior criminal court in that State, and I meant to say that so far as I am concerned, whether it does or does not happen in the present office, wherever it happens, I have been bitterly opposed to that practice ever since I first heard of it, and my first hearing of it was when Mr. Jerome originated the "John Doe" procedure and would serve men with a subpoena, and the men would be taken into the assistant's office practically helpless. I have been consistently bitter against that. I think it is wrong, I think it is unfair, and I think it is un-American. Whether it happens now or not I do not know.

Mr. GARD. Except in this one instance of which you have told us?

Judge MAYER. Yes.

Mr. GARD. That was a question whether he appeared voluntarily or not, and he was being held so it was reported to you in open court and refused communication with his relations—his son, I believe?

Judge MAYER. That is true.

Mr. GARD. And your order was ultimately that he be released, I believe?

Judge MAYER. Yes; he was released.

Mr. GARD. Could you tell us of any other instance within your knowledge where similar procedure has been used since Mr. Marshall has been district attorney?

Judge MAYER. I can not recall another case.

Mr. GARD. Of course, there is no law either State or Federal, which would permit such practices as that?

Judge MAYER. None that I know of. If a man is subpoenaed to go before grand jury, he ought to go before the grand jury and no other place. My views on that are very definite, and everybody who is familiar with my position on such matters, when I was a judge in the State courts there, or attorney general, everybody knew what my views were. I would not be surprised if it has gone on a whole lot since then in the State district attorney's offices throughout the State; just where and when I do not know. But it is wrong.

Mr. GARD. I agree with you; it is very wrong.

Judge MAYER. It is a power these men exercise by virtue of what they, from their point of view, think should be the means of getting evidence; but it is wrong, and I would be very glad to see something that would stop it. The difficulty is that, except in some such acute instance as I was asked about, it rarely comes to the attention of the judge.

Mr. GARD. We want it brought to our attention here by specific instances. We have the power to act, we think.

Judge MAYER. Exactly. But that is the only instance I am quite sure—while you have been talking I have been searching my recollection—that I have in mind which has occurred. Incidentally, Mr. Marshall was away from New York at that time.

Mr. GARD. Can you tell us how many assistants Mr. Marshall has in his office?

Judge MAYER. I do not know, Mr. Gard.

Mr. GARD. Do you know anything about how many so-called investigators, if that may be an apt phrase, he has in his office?

Judge MAYER. I have not the faintest idea.

Mr. GARD. Do you know whether or not at this time, or within the last three or four months, there have been special assignments of investigators to his office with whom he is working?

Judge MAYER. No.

Mr. GARD. You know nothing of that?

Judge MAYER. Nothing at all.

Mr. GARD. I understand you know nothing of the criminal term or any of the affairs of the district attorney's office since you have held your last term with the grand jury?

Judge MAYER. I can tell you pretty accurately anything that happened in December, and I have had one or two matters before me since then, because I have been on the ex parte side until this month.

Mr. GARD. Judge Hough, by some arrangement, I believe, is the man who secures these foreign judges to come to New York?

Judge MAYER. He represents the four of us. I mean he is merely, as it were, the chairman of our body.

Mr. GARD. He is the senior judge?

Judge MAYER. Yes.

Mr. GARD. What is his age?

Judge MAYER. Judge Hough is about 56 or 57. He graduated from Dartmouth in the class, I believe, of 1879.

Mr. GARD. Do you know anything personally of any intimate relations of these foreign judges with the district attorney, Mr. Marshall, in any personal way?

Judge MAYER. I know nothing.

Mr. GARD. You have no knowledge of any circumstances of that kind?

Judge MAYER. No.

Mr. CARLIN. In the case of this witness you spoke of, did the complaint come to you from the witness himself that he was being detained, or did it come from the outside?

Judge MAYER. The complaint came, as my recollection serves me, from the lawyer whom the son had engaged. The son wanted access to the father. The son, I think, was under—I am not clear about this—suspicion. The father was being examined by this young man in Mr. Marshall's office, and in all this excitement they came in while I was conducting court, and they started argument. I said, "Just bring them right in here."

Mr. CARLIN. The witness himself made no complaint.

Judge MAYER. No; he had not made any complaint. Of course, when he got in the court room he was one of these men that might have been very shrewd or might have been very dumb—I do not know—and he would not commit himself.

Mr. GARD. Let me ask you another question: The grand jury's process, is that signed by the court having charge of the grand jury, or is it signed by the district attorney?

Judge MAYER. You mean the subpoenas?

Mr. GARD. Yes.

Judge MAYER. My recollection is that they are signed by the district attorney. I have no recollection at the moment of ever signing anything in the way of a subpoena, and I am pretty sure that is signed by the district attorney, but I will not be certain about it, because I confess that every now and then, on matters of procedure, I am so busy that I would take the clerk's word for granted. Mr. Leary, whom you will have before you, is clerk of the criminal part, and he knows that from beginning to end in detail.

Mr. NELSON. Judge, I know you are anxious to get back, because I know you have some jury waiting upon you, and I will not take much time.

Judge MAYER. I am very glad to stay and answer anything I can.

Mr. NELSON. What opportunity is there for the district attorney to be consulted about or to have anything to do with invited judges?

Judge MAYER. So far as I am personally concerned, I have no recollection whatever of ever consulting or conferring with the district attorney. Of course, in a broad way, there is the opportunity of the district attorney calling upon the judges and saying such and such men are good men, or what not.

Mr. NELSON. That is the point. Have you any recollection at all of District Attorney Marshall having made any suggestion as to any judge during his term?

Judge MAYER. Not so far as I am concerned, and there are none that I have heard of. I think this might be made clear to you, which

I did not make clear. Of course, in sending out these invitations, Judge Hough has to ascertain from these men when they can come, and very often—I will not say “very often,” but occasionally—some man intends to come, but he is disappointed and can not come. For instance, Judge Dayton, who is to come with us next week, succeeding Judge Clayton, I think, is a week or two late beyond when he expected to come over there. Now, so far as I know anything of this kind, that we say “Judge So-and-so, we want you to come to our district on the first Monday of February, nineteen hundred and blank,” it is quite to the contrary; we send out, through Judge Hough, what might be called a general letter of invitation, asking “When can you come? What part of the court would you prefer?” etc.

Mr. NELSON. What I was getting at was this: How could the district attorney control as to the appointment of judges, or discriminate in the selection of a judge, except speaking through the judges?

Judge MAYER. He can not.

Mr. NELSON. I presume that the senior judge, Judge Hough, would be largely the man who would have this in charge, would he not?

Judge MAYER. Yes. As I say, we four judges meet every month among ourselves for the purpose of discussing the business of the court and going over any question of rules or what not. Now, Judge Hough, he is the senior in service, so he is our presiding judge in our little group of four men. He has kept track of all this correspondence, and been the instrument through whom it has gone, merely representing us; I mean it is not his own affair, and as I want to emphasize for your own information, it is simply if Judge So-and-so says—for instance, Judge Grubb, who lives in Alabama, Judge Russell, who lives in Texas, can always come up here in the summer; Judge Sheppard, who lives in Florida, can come in September; Judge Somebody-else can come here only in the winter, and if they express a preference for any particular side of the court, we are very glad to assign them to it.

Mr. NELSON. Have you had knowledge or information as to these imported judges, if I may use the word—I might say “invited” judges, which would perhaps be better—being entertained by the present district attorney while there; taken to dinners and things of that sort?

Judge MAYER. The only thing that I know anything about, except to say “No,” is this: I know shortly after I was appointed the then United States attorney and his staff, who then had a dinner every month, invited me to be the guest of the evening on one of these occasions. I am not sure about it, but I think these young men keep up this monthly dinner?

Mr. NELSON. Are they composed of the assistants in the district attorney’s office?

Judge MAYER. The district attorney and his assistants.

Mr. NELSON. And at those dinners do they discuss matters pertaining to cases actually on trial?

Judge MAYER. No, no; I can give you only the sample that I attended. For instance, they are very good; one young man got up and read a most lawyer-like paper on the national banking act and the various constructions of the courts as to the violations thereof; another man read a paper on the pure food law; then, after they get

through with that, they discuss it. The theory of Mr. Wise, who originated this thing, was to develop a spirit of an educational development among his men. The dinners are very modest. The one I attended, as I recall, was at the Yale Club, and it was very modest; they all come in their business clothes, just taking dinner that night together, instead of somewhere else.

Mr. NELSON. Six o'clock dinner?

Judge MAYER. Six or half past six. I am trying to recall whether I attended another one or not. We will see if I did; but on the one or two occasions I was there they have had very intelligent and useful discussions among those young men. Most of these assistants, on account of the salary, are pretty young men.

Mr. NELSON. How many assistants has the district attorney, approximately?

Judge MAYER. That would be very difficult for me to say. Let us see. There is Mr. Wood, Mr. Knox, Mr. Harper, Mr. Barnes, Mr. Yselli, Mr. Content, Mr. Roosa, Mr. Thompson, Mr. Stanton, Mr. Hershenstein, and probably some more, some of whom, by the way—for instance, Mr. Barnes, is on the civil side only. I do not think I have ever seen him on the criminal side. There is a good deal of civil business there, too, you know.

Mr. NELSON. Does the district attorney also attend some of these dinners?

Judge MAYER. I do not know. I have never attended any of them under him. I have forgotten which judge was invited as the guest at one of these little dinners. Which it was, I do not know, and it may be that several of them have been.

Mr. NELSON. You mentioned the fact that in your practice in New York you permit the stenographer to be present before the grand jury?

Judge MAYER. Yes.

Mr. NELSON. What other representatives or officials are present?

Judge MAYER. Only the United States attorney and his assistants.

Mr. NELSON. What is done with the stenographer's notes?

Judge MAYER. Let me make that just a little clearer, Congressman. The attorney general has hired or designated a special assistant, I think the form takes——

Mr. NELSON (interposing). You say "the attorney general." You mean the district attorney?

Judge MAYER. No. I mean the stenographer, he has made a special assistant, or something of that character. What he does with the notes I do not know, except that I assume that he retains those notes in his possession, being a sworn officer. Of course, as Judge Lacombe, in the opinion which decided that point, shows, you see, sometimes these investigations are not continuous. For instance, you may have to adjourn for a week to get another witness, or whatever it may be, and here is the testimony that is taken down by the stenographer, which can be read to any grand juror who might want his memory refreshed, or anything of that sort.

Mr. NELSON. The district attorney would retain possession of the notes in the meantime?

Judge MAYER. I do not know what physically is the fact. I had assumed that the stenographer, by what ever name called, who was responsible for it, would retain the notes.

Mr. NELSON. Does it not happen in the practice in New York that those notes are produced in cases to see who testified before the grand jury, and what the witnesses said?

Judge MAYER. I have knowledge of only one such instance.

Mr. NELSON. Will you tell us about that?

Judge MAYER. If I correctly understand your question, recently?

Mr. NELSON. Yes.

Judge MAYER. A man was cited before me for contempt, for refusing to answer certain questions before the grand jury.

Mr. NELSON. My purpose is to get at the use of the record.

Judge MAYER. Then, in order, of course, that I should be able to rule intelligently, the questions that were asked, and which he refused to answer, were read in court; but outside of that, I know of no instance where what took place in the grand jury room has become public in any manner, and that was only public because it had to be public in order to rule on these questions. Do I answer your inquiry?

Mr. NELSON. Yes. How many of these assistants that you have enumerated were taken right out of Mr. Marshall's former law office, or were connected with him when he was in private practice?

Judge MAYER. I recall only two; Mr. Wood and Mr. Content.

Mr. NELSON. Any clerks of importance that you know of?

Judge MAYER. I do not know of any. Of course, there may be, but I would not know that. I remember both those gentlemen.

Mr. NELSON. Do you know of any relatives or members of his former firm that have been employed as his assistants?

Judge MAYER. The only relative that I know of is Mr. Stanton, who is a nephew of Senator O'Gorman.

Mr. NELSON. He is an assistant of Mr. Marshall's?

Judge MAYER. Yes.

Mr. NELSON. Have you heard of or do you know of any complaint on the part of members of the bar that because of the organization of the district attorney's office in this way—I mean, a number of appointments having been made from his former firm, and a relative that that works to the prejudice of other attorneys in securing litigation?

Judge MAYER. No; I have never heard that. I never have. I mean, that is a great surprise to me, because I have not followed the statistics at all. So far as the petty business is concerned, there are certain men that seem to have it more or less at all times, but very unprofitably. So far as the larger business is concerned, you see different lawyers of ability in that branch turn up; Stanchfield & Levy are counsel in several important matters, and I have forgotten who all; but I frankly think that that is just lawyers' talk; I mean, it is just the talk, perhaps, of some men who could not be retained anyway.

Mr. NELSON. Do you know anything, Judge, of the practice, if there is such a practice in this district, of the district attorney, or his assistants, having subpoenas served upon witnesses of parties on the other side to be examined privately before them?

Judge MAYER. No.

Mr. NELSON. Or taken to the grand jury?

Judge MAYER. No; I do not know of any such practice.

Mr. NELSON. Or taken to the grand jury without being taken first to them?

Judge MAYER. I have no recollection of anything of that kind occurring, so far as I know.

Mr. NELSON. Do you know that it does not occur that a witness of the other party is taken before the grand jury by the district attorney or his assistants, and examined?

Mr. CARLIN. For the defense.

Mr. NELSON. I mean, for the defense?

Judge MAYER. I simply do not know either way.

Mr. NELSON. You have not heard any complaint made?

Judge MAYER. No.

Mr. NELSON. Or of the attorneys for the defense being subpoenaed and appearing before a grand jury to testify in a case pending? Have you ever heard of that being done, or do you know of anything of that kind being done?

Judge MAYER. I do not think so. I am just hesitating to see if there is anything. If there were any name mentioned, some incident might come back, but I have no recollection of any such thing.

Mr. NELSON. What would you think of that practice of subpoenaing witnesses of the defense and the attorneys to come before a grand jury to be quizzed, before a case was tried?

Judge MAYER. That is very difficult to answer.

Mr. NELSON. Do you think it good practice, Judge, is such actually obtains?

Judge MAYER. I think the test there would really be what the situation was. If a situation existed where it was manifest that that was a means of officially terrorizing or something of that sort, of course it is to be severely condemned. If, on the other hand, there was some situation where justice was being obstructed, some scheme was on foot to accomplish some undesirable or bad result, and the prosecuting officer, in the exercise of conscientious judgment, thought that he ought to promptly stop it, it might be a perfectly justifiable thing.

Mr. NELSON. Have you not some particular case in mind now, Judge, when you are speaking, which you think would suit your thought?

Judge MAYER. I was trying to search my memory as to some instance claimed to have happened prior to Mr. Marshall. For instance—it is a little delicate about discussing it, because the case was tried before me—but in this particular case that I spoke about, the Hawthorne, etc., case, there were some indictments against some men and some witnesses who lived in Canada and were citizens of Canada, were afraid to come on, it was claimed, because when they got here they would be arrested under these indictments. If I had been United States attorney at that time, and A was to be tried, and B was a material witness, and the process would not run to B in another country, I think the interests of justice would require that B should have an opportunity to come here and be a witness for A, who was on trial and return—come here under practically a safe conduct. Now, all that sort of thing I never have approved of and do not believe in. I know of no such instance in Mr. Marshall's administration, and my thinking about the thing was to try and recall those details. Now, in that case—I do not know the details of the thing—but in that same case attorneys were subpoenaed who, it was claimed, had certain books—that is, attorneys connected with the defense—and that was

presented before one of our district judges who heard the whole business and, I think, made an order in regard to the books; but the details I do not remember; I mean it was not before me and I did not concern myself with it. I do not know whether any such incidents have occurred. None have been called to my attention during Mr. Marshall's administration.

Mr. CARLIN. How many judges in the southern district of New York are of the same political faith as Mr. Marshall?

Judge MAYER. Why, one; that is all.

Mr. GARD. Who is president of the New York Bar Association?

Judge MAYER. Mr. Wickersham.

Mr. GARD. Is there any other body of lawyers assembled under any corporate name?

Judge MAYER. Yes; there is the New York County Lawyers' Association.

Mr. GARD. Who is president of that?

Judge MAYER. I have forgotten this year whether ex-Judge Cullen is president or not. I think ex-Judge Cullen, chief judge of the New York Court of Appeals, is president—Edgar M. Cullen.

Mr. GARD. Can you tell us approximately the membership of those two organizations?

Judge MAYER. I can not, Congressman. The county lawyers' association has a large membership.

Mr. GARD. Larger than the bar association?

Judge MAYER. Yes. I would not be a bit surprised if it ran to a couple of thousand members of the bar, or more. The bar association, I think, runs around 1,200 or thereabouts, and yet I really do not know. I used to know pretty accurately, but I have not lately.

Mr. GARD. How many members of the bar are there in New York?

Judge MAYER. It is variously said that there are between 12,000 and 15,000 members, and I would not be a bit surprised if the county bar had more members. Then there is the Bronx County Bar Association, there is a Queens County Bar Association, and there is a Brooklyn Bar Association or a Kings County Bar Association, and between them all they take in, I think, a fair number of men.

Mr. NELSON. Let me ask you this question: Is there any grievance committee of the New York Bar Association?

Judge MAYER. Yes.

Mr. NELSON. To which any attorney can make complaint?

Judge MAYER. Yes.

Mr. NELSON. Of what does it consist and what is its function?

Judge MAYER. Both these associations that I was mentioning, Congressman, both the old association of the bar, whose place is in Forty-fourth Street West, and this newer New York County Bar Association have grievance committees. Any person can lay his complaint before that grievance committee. Then, after they have investigated the matter, if they decide that the matter should be presented to the courts, they present it to the appellate division of the first department; the appellate division then appoints a referee to take testimony. If the referee reports—well, whichever way he reports, adversely or favorably—the matter then comes up for final determination by the appellate division, and the Court of Appeals of New York has held that that determination is not reviewable on the facts.

If there is a question of law, perchance—which, of course, very rarely happens—then it will review; otherwise not. We have the power in the Federal court, of course, of taking up any case which has to do with the Federal court or its procedure or practice—I mean, where lawyers come into that situation. Generally speaking, unless it is a particular situation, we send it through this other procedure, because if the man is disbarred by the appellate division, that automatically disbars him before us, but if we disbar a man, that does not disbar him from practice in the State courts.

Mr. NELSON. I did not quite understand, Judge, how this old man was being detained. Was he in prison?

Judge MAYER. Oh, no.

Mr. NELSON. Where was he being held?

Judge MAYER. He was then, at the time, in one of the offices of the United States attorney's office.

Mr. NELSON. Locked up?

Judge MAYER. No; he was in a room there.

Mr. NELSON. And not permitted to leave the room?

Judge MAYER. The claim was that this young man—this young assistant would not permit anyone to see him while he was in the room.

Mr. NELSON. How long had he been in that room?

Judge MAYER. I can not remember. I think the claim was that he had been there for an hour or so.

Mr. NELSON. Not over that?

Judge MAYER. Oh, no; it was in the daytime.

Mr. NELSON. And how long was he to be detained, if you had not interfered and ordered his discharge?

Judge MAYER. My recollection about that, as far as I can think of it now, is that the charge was made he was going to be kept there during that day, until his examination was completed.

Mr. NELSON. By them there in the room?

Judge MAYER. Oh, yes; by them there in the room. Now, I think; you know the details of the incident—of course, there are so many things in my mind—have passed from me somewhat; I think I have forgotten a very important point that has just occurred to me; that man had been brought there, I think, from the Tombs—had been arrested. That was it. He was, I am pretty sure, one of the persons indicted in connection with this bankruptcy conspiracy.

Mr. NELSON. I just wondered why they were so zealous to get him discharged for an hour's detention, or thereabouts.

Judge MAYER. Yes, that was it; he had been indicted and brought up there to this office, the prosecuting officers evidently figuring to avail of him, if they got the information, as a witness for the Government. Of course, the other people were very anxious that he should not be a witness for the Government. That is how the controversy arose. The point of it is that what the young assistant—I mean he meant from his point of view, all right, I suppose; but that did not accord with my notion of how things should be done; that is all there is about that.

Mr. NELSON. What did you think should be done or not be done in a case like that?

Judge MAYER. My feeling is this: That if my premises of fact are right, if a man is under indictment, if a prosecuting officer brings

him to his office, if a son of that man or some other persons say, "Let me have access to this man; let him have legal advice before he is interrogated." He is under indictment. You say, if you like, that nothing he says will incriminate him. Well, maybe that is so and maybe it is not; but being under indictment, he is entitled to proper lawyer's advice. Then I think it is the duty of a prosecuting officer to say: "All right; even though this man has told me that he is willing to do so and so, in order to safeguard his rights, I will permit him to have proper advice, and then let him determine after that advice if he has the good sense to do what he pleases to do."

Mr. NELSON. How long had he been in the Tombs before he was brought up there?

Judge MAYER. I do not remember, Congressman.

Mr. NELSON. You do not know whether the son had applied for the opportunity or privilege to see him in the Tombs or not, before he sought to see him before being quizzed by the assistants?

Judge MAYER. No; I do not remember, and as I say, I will not want to be held in my memory for being sure he was in the Tombs, but I think that was the case.

Mr. GARD. I wish you would fortify yourself with this man's name, so we can get it.

Judge MAYER. Yes; I will do that.

Mr. NELSON. Would it be possible, from what you know of the situation over there, for the district attorney to go to some visiting judge, not familiar with your practice, and talk to him about the case, and suggest how it ought to be decided?

Judge MAYER. Of course, that is a large question. I suppose that would be possible.

Mr. NELSON. I know it is a broad question, but are the surroundings of those dinners, and so forth, such that you think that that would be easily accomplished?

Judge MAYER. No, I do not think so. In the first place, I do not know whether—what men have gone to those dinners; I do not know really whether they are going on or not. My sole objection to going to them is that I feel that as the resident judge, I do not want to be in that kind of a way on a social relation with a lot of younger men. That is my main objection; I am not at all disturbed about what these people might say to me, if I went to the dinner. I mean, if you saw the kind of men who come and sit there from other parts of the country, I do not think you would believe for a minute that any United States attorney would attempt to do anything.

Mr. NELSON. That is what I want to get. This is your own opinion, but you are around the court, and we are looking for light.

Judge MAYER. Yes. I am perfectly convinced—it is really interesting to see the kind of men; as I said before, they are strong men, with hardly an exception; in many instances, Federal judges who have come from other States, have been members of the high courts of the States; they are men of maturity, and good lawyers; men of large experience, very often at the bar and in public life; many of them have been Members of Congress or State legislatures, or what not, and I do not believe a United States attorney would have the temerity, if he had the disposition—

Mr. NELSON. I mean, just discussing this, a judge who is not familiar with the practice, and perhaps not entirely with some aspects of

the law, who, you might say, was in the admiralty branch, or in something peculiar to his jurisdiction, would he be likely to be open to any suggestion, not in an improper way, but in the way of helpfulness, on the part of the district attorney?

Judge MAYER. I suppose he would be very glad to hear what, as I said before, the local practice on any such thing was.

Mr. NELSON. Has it come to your knowledge that any outside judge has said "You can not talk to me on this subject. If you have anything to say, you have got to say it in open court, in the presence of the opposing attorney." Have you ever heard any such rumor?

Judge MAYER. No, I have not.

Mr. NELSON. None such has ever come to your knowledge?

Judge MAYER. No. I have had experience often of a man coming to my chambers and wanting to say something about some case, and saying that he has seen the district attorney or the assistant, and that he said he could come over and see me. I have always said "You must both be here. I will not hear anybody alone." Of course, everybody knows that is the way I treat these things, and maybe some such talk as that has gotten abroad.

Mr. NELSON. I want to say this is not with reference to you, Judge.

Judge MAYER. I understand.

Mr. NELSON. This was outside.

Judge MAYER. No; I have never heard of any other.

The CHAIRMAN. There has been something said in the executive hearings here to the effect that the United States attorney's office for the southern district of New York has the other lawyers of New York terrorized. Do you know of anything of that sort? Or any feeling of that kind among the lawyers or practitioners in New York?

Judge MAYER. No; I can not get that at all. I mean to say, if a lawyer is clean and straight, he need not be afraid of the United States attorney, or anybody else.

The CHAIRMAN. There has been a good deal said about a man named Wood, assistant district attorney. Do you know Mr. Wood?

Judge MAYER. Yes.

The CHAIRMAN. Would you mind telling the committee what kind of a man he is professionally, and his character, etc.?

Judge MAYER. Of course, that involves another embarrassment, but I am perfectly frank to say—

The CHAIRMAN. (interposing). Just speak of him as an officer of the court.

Judge MAYER. Wood is a very earnest, enthusiastic, sincere man. He has the over-enthusiastic zeal at times of the prosecutor; in other words, he has got that mental temperament which some people think makes a good prosecutor. Now, I never—and this is purely a mental attitude—could see why anybody should get terribly excited just because he was prosecuting an offender, beyond the point of presenting the facts in such manner that he would gain the result that he thought the facts justified; and the result of that thing is that Wood, by virtue of his force and earnestness, has undoubtedly made a good many enemies.

The CHAIRMAN. Made what?

Judge MAYER. Undoubtedly made a good many enemies, because he is not a suave man, especially, and he is inclined to be a little bit rough, as it were; I do not mean "rough" in any unpleasant sense,

but rough, as indicating force and emphasis and strength, and I have not any doubt that among certain kinds of men at the bar he has made enemies by that fact. He is a man who might lose his temper. In the incident that came up during the trial of one of these cases, he evidently lost his temper, and he might, excepting for the admonition that was given him then, lose it again; but that is, to my mind, all that you can say about him, and that is not much of a criticism against any man.

The CHAIRMAN. What about his professional integrity and character?

Judge MAYER. I have never heard it questioned.

The CHAIRMAN. How old a man is he?

Judge MAYER. It is rather difficult to say.

The CHAIRMAN. Apparently.

Judge MAYER. I should think Wood was somewhere around 40.

The CHAIRMAN. That is all I care to ask.

Mr. CARLIN. That is all, Judge Mayer.

STATEMENT OF LOUIS S. LEVY.

Mr. LEVY. I am an attorney at law, practicing in New York City,

Mr. CARLIN. You are familiar with the act which provides for requesting judges outside of the State of New York to hold court in the southern district of New York?

Mr. LEVY. Not particularly familiar.

Mr. CARLIN. You know that is the practice, do you not?

Mr. LEVY. I do.

Mr. CARLIN. Do you know how those judges are invited?

Mr. LEVY. As a matter of hearsay, I do. I have never seen any invited or seen any of the invitations that were sent to them, but I have been informed that the practice is rather general that judges are communicated with by some of the senior judges in New York; are asked whether or not they would like to come to New York to hold a term of court; when they would prefer to come, and what court they would prefer to hold; that that invitation has been extended generally throughout the country; and that upon receipt of replies that the officer of the court there whose duty it is to do so endeavors to arrange calendars such as will accommodate the visiting judges.

Mr. CARLIN. Have you any information as to whether or not the United States district attorney has any relation to the invitation of an outside judge?

Mr. LEVY. I have never heard it said that he had any. Of my own knowledge, I do not know that he has any, and, personally, I do not believe that he has any.

Mr. CARLIN. Are you familiar with the methods of subpoenaing witnesses before the grand jury?

Mr. LEVY. Somewhat.

Mr. CARLIN. Who signs those subpoenas?

Mr. LEVY. I am not positive whether they are signed by a clerk—the clerk of the court—or whether they bear the signature of a judge. We get them as a matter of course, and I have always understood that a district attorney gets them as a matter of course, but if you asked

me to tell you exactly what is in the body of that subpoena, I could not do it.

Mr. CARLIN. Have you any information as to the misuse of a subpoena for summoning witnesses before the grand jury?

Mr. LEVY. I do not think I could fairly say that I have. Of course, every man in a case in which he is interested, feels that the district attorney can get anybody that he chooses to go before a grand jury and disclose what he knows, but I have never personally been interested in any case, nor do I know of any case where I could say that that power had been abused. It is a great power, but I can not say that I have ever known it to be abused by this district attorney in New York, or his predecessor.

Mr. CARLIN. Has your firm a large practice in the Federal courts?

Mr. LEVY. In the what?

Mr. CARLIN. In the Federal courts; I mean, especially, with regard to criminal practice.

Mr. LEVY. It would depend upon what you mean by the word "large." We have some cases all the time in the Federal courts of New York. They are mostly cases of considerable importance, but I think there are firms that have larger practices, perhaps, than we have, but perhaps no other firm that has any more cases of great importance.

Mr. CARLIN. Speaking with reference to the firm of O'Gorman & Battle—is that the style of the firm?

Mr. LEVY. The style of the firm is now O'Gorman, Battle & Vandever.

Mr. CARLIN. Are you familiar with the extent of the practice of that firm in criminal matters in the Federal courts?

Mr. LEVY. I am, as much as one lawyer would be with the general practice of another lawyer in the same locality. I know all the members of that firm personally; have frequently met them on the opposite side in civil cases, and even on the same side in criminal cases.

Mr. CARLIN. With reference to that firm and its relation with the office of the district attorney, do you know anything that would lead you to believe that the relation is in any way improper?

Mr. LEVY. No; I think it is quite the reverse. I think it is a matter of common knowledge in New York that that firm, which had enjoyed a very considerable practice in all courts—in criminal courts and in Federal courts—before the present incumbent of the United States attorney's office, has probably had less to do with important cases since Mr. Marshall's incumbency than before, and I personally know of cases wherein the members of that firm have declined to take retainers, although I myself considered it perfectly proper that they should, simply because they did not want to invite criticism. As to just what cases they now have pending, of course I do not know. I am giving you my impression.

Mr. CARLIN. It has been represented to this committee that it is very generally understood among persons who would be charged with crime, or who are charged with crime, that if they had this firm for counsel there would be great likelihood of leniency. Is that true or not?

Mr. LEVY. I want to state to this committee that I consider that absolutely untrue; that I consider that a man who has employed

that firm to-day will get less consideration from the United States attorney than a man who has employed another firm; that that firm would be less likely to attempt the ordinary legitimate things that every lawyer is called upon to do in his practice, representing a client or trying to vouchsafe his liberty, than an ordinary firm could do for him, and I want to say that I know of instances where that firm could legitimately have taken important cases and have declined to do so; and I also want to say—and this without any reflection upon the ability of the prominent members of that firm—that in nearly every case of theirs that I have seen their client has gone to defeat. I do not mean to say that that is a reflection upon the firm, but I mean to say they have had hard cases; they have fought them, and they have lost them.

Mr. CARLIN. Do you mean to say that that firm would be less likely to have courtesies extended to them by the United States attorney's office than other firms?

Mr. LEVY. I do. I mean to say, first, that that firm would be less likely to ask for the ordinary courtesy that I would ask for; that it is next to impossible to get Mr. Battle, who is the leading member of the firm in practice, to ask for anything, and then if you could induce him to ask for the most ordinary consideration he would do it in such a half-hearted way and fail to follow it up that he is not likely to get it, and among lawyers practicing as I am practicing that is pretty generally understood. I think it is only fair to make that statement.

Mr. CARLIN. Do you know of any effort or of any act of the office of the district attorney to prejudice the public in matters in which its office would be interested through newspaper publication?

Mr. LEVY. May I answer that question in my own way?

Mr. CARLIN. Certainly, sir.

Mr. LEVY. I have been practicing in New York with Mr. Stanchfield while there were prior, other incumbents, of that office. I do not know Mr. Marshall personally. I know him by sight. I have never personally spoken to him. I sat once at a table where he sat—that is, a large table—but did not meet him, but I want to say for the first time since I have been at the bar in New York that office has been conducted with the least amount of newspaper publicity. The only possible exception lies, perhaps, in the so-called "neutrality cases," wherein the newspapers are hounding everybody. I mean that occasionally we get into one of those cases, and I know what it means to put the newspaper reporters off your back, and I do not attribute the stories to that office, because I see stories that are attributed to me which have no foundation; but in the ordinary practice of that office I want to say that I consider Mr. Marshall has indulged in a newspaper campaign to a very much less degree than any man who has held that office since I have been at the bar. He does not fight his cases in the newspapers. He has abstained from the practice of stating through the press what he intends to do in a given case, or what he intends to do on a given day of a trial, or what his plans are, or what the witnesses will testify to. He is running his office like a lawyer.

Mr. CARLIN. Do you know of any dereliction upon the part of the district attorney's office in regard to the prosecution of vessels for carrying explosives?

Mr. LEVY. I beg pardon?

Mr. CARLIN. Do you know whether or not that office has ever refused to prosecute the owners of any vessel carrying explosives?

Mr. LEVY. I do not.

Mr. CARLIN. Or for maintaining a naval base?

Mr. LEVY. I do not; I never heard of any.

Mr. CARLIN. For shipment of naval stores or munitions?

Mr. LEVY. I do not; I never have heard of any.

Mr. CARLIN. Do you know of any effort on the part of the district attorney's office to influence either the grand jury or a judge in any improper way?

Mr. LEVY. I do not, and have never heard of any.

Mr. CARLIN. Have you heard that stated in New York?

Mr. LEVY. I have never heard it even suggested, sir.

Mr. CARLIN. Do you know of any act of the district attorney's office, either of Mr. Marshall or his assistants, which would tend to improperly influence either the public, or the grand jury, or the court in the discharge of their duties?

Mr. LEVY. I do not, and I have never heard of any.

Mr. CARLIN. Yours is a busy firm, Mr. Levy?

Mr. LEVY. One of the busiest in New York; 17 lawyers.

Mr. NELSON. Seventeen lawyers in your firm?

Mr. LEVY. Yes, sir.

Mr. CARLIN. Seventeen lawyers in the firm?

Mr. LEVY. No; two in the firm, others with interests; but there are 17 of us.

Mr. CARLIN. You have a pretty good acquaintance then among the bar of New York?

Mr. LEVY. I think I have an unusual acquaintance, because most of our practice is counsel work for other lawyers—90 per cent of it; so that there are few lawyers of standing in New York whom I do not know.

Mr. CARLIN. It has been represented to us that Mr. Marshall's relations, first to the firm of Battle & O'Gorman, were matters of general discussion among the members of the bar of New York, to the discredit of the office of the district attorney. What do you know about that?

Mr. LEVY. I can only say to you, gentlemen, that the exact reverse is the fact. It is quite natural when a man comes out of a large firm and takes public office that people generally should think that his former associates would have some influence or some unusual standing with him when he gets into that office; but I want to tell you from my personal experience, from what I have seen and what I have heard, that the exact contrary is the case with Mr. H. Snowden Marshall. I do not owe Mr. Marshall anything—any favors of any kind; as I say, I hardly know the man except by sight; but it is well known in New York that you can not get even the ordinary consideration through the services of O'Gorman, Battle & Vandever, because you can not expect them to do for you what an ordinary lawyer would endeavor to do in the district attorney's office.

Mr. NELSON. In other words, they lean over backward?

Mr. LEVY. They lean over backward, to their own detriment and to the detriment of their clients. I have no hesitation in saying so, so, because it is a fact.

Mr. CARLIN. Do you know anything of the relation of the secret service operatives with Mr. Marshall's office relating to matters in which foreign Governments would be interested?

Mr. LEVY. I do not. We read in the newspapers, you know, about the activities of the Secret Service, but I have never heard anything said about the activities of the Secret Service in relation to Mr. Marshall's office.

Mr. CARLIN. Do you know any fact, Mr. Levy, which would enable this committee to more thoroughly understand the operations of the district attorney's office, if there should be improper operations, other than what you have testified to?

Mr. LEVY. I do not know any fact, which in my judgment, by any construction or interpretation could be construed—could be considered as casting a reflection upon Mr. Marshall in the conduct of his office. I know pretty thoroughly how the office is run; I know what the machinery of the office is; I know what a gigantic task it is; I know that it takes a real man to run the office; I know that every time you come in contact on the other side you feel the power and strength of that office, but I want to say that I consider Mr. Marshall an exemplary district attorney, a man who quietly and effectively discharges the functions of his office without rushing into print; who gives every man a chance; who never hounds anybody; even after he has convicted his man he always makes a fair statement to the court; he never asks the court for the limit; he is never after the last drop of blood; and that is my ideal of a public prosecutor. We have few of those men. We have had very bad prosecutors in New York, and good men too, but I do not know any man that matches up to Mr. H. Snowden Marshall. That is my opinion of him, sir.

Mr. CARLIN. Mr. Levy, have you known of the practice of subpoenaing witnesses before the district attorney's office and examining them before they are sent into the grand jury room?

Mr. LEVY. I have known of cases in which that was done, Mr. Chairman. I do not know of any cases in which it was done recently.

Mr. CARLIN. Do you know of any statute that gives the district attorney that power?

Mr. LEVY. I do not; but I may say that as long as I can remember it has been the custom, both in the Federal and in the State district attorney's office, to send for witnesses, frequently to subpoena witnesses, and often to confer with them before taking them in before a grand jury; sometimes not even taking them in before a grand jury. If the witness happens to be recalcitrant, they take him before the grand jury, but we in New York think nothing of it if the State district attorney telephones a man to come down to confer with him, or sends him a grand jury subpoena and confers with him. It is done very commonly. I agree with you that I do not believe there is a legal authority for it, but it is probably sanctioned by long-time custom.

Mr. CARLIN. Your grand jury sessions, I believe it has been testified to here, are attended by a stenographer from the district attorney's office?

Mr. LEVY. Yes.

Mr. CARLIN. Does the stenographer take only the testimony of the witnesses, or does he take the discussions of the members of the grand jury?

Mr. LEVY. Inspection of the minutes of a Federal grand jury is a privilege so rarely conferred upon us practitioners that it is very difficult for me to say what he takes.

Mr. CARLIN. But in those rare instances where it has been conferred, what did you find to be the case?

Mr. LEVY. I do not believe I have ever seen an instance. It is next to impossible for a defendant to get an inspection of a Federal grand jury's minutes. You can get them of a State grand jury occasionally.

Mr. CARLIN. Does not your State practice allow you, on motion, to require the exhibition of those minutes?

Mr. LEVY. If you can persuade the judge that a constitutional right of the accused has been infringed upon—and I want to say it is some job to persuade the judge, and there is no appeal.

Mr. CARLIN. It is the same practice, practically, in the Federal court there?

Mr. LEVY. Practically; the same principle, but not the same practice.

Mr. CARLIN. You have the right to make the motion?

Mr. LEVY. Yes; you can make the motion, but it is never granted.

Mr. CARLIN. It is never granted?

Mr. LEVY. It is rarely granted. It is practically a dead letter.

Mr. CARLIN. Is it your experience that the grand jurors are practically under the dictation of the district attorney of New York?

Mr. LEVY. It is my experience that grand jurors are largely under the leadership of district attorneys everywhere, both in New York and in surrounding territory. Occasionally you will find a strong man on a grand jury, who takes the thing in his own hands; but usually a grand jury gets its advice from the district attorney, who tells them what he thinks is the law and what facts he thinks he has established, and he presents them with a form of indictment, and then the district attorney leaves the room, and they sign.

Mr. CARLIN. There has been a charge here that there were improper relations existing, perhaps, between the American Tobacco Co., the Metropolitan Distributing Co., the United Cigar Co., and the United States district attorney's office. Do you know anything about these matters?

Mr. LEVY. I know some of those companies and represent none of them. I know several lawyers who do. My own opinion is that that charge is absolutely baseless.

Mr. CARLIN. It is also charged that there is, perhaps, misconduct in connection with other corporations by the district attorney's office. Do you know anything about that?

Mr. LEVY. I want to say that I consider that absolutely baseless, and I also want to say that I consider the firm of O'Gorman, Battle & Vandever to have less corporation business than any first-class firm, perhaps, in New York.

Mr. CARLIN. I assume from that you consider them a first-class firm?

Mr. LEVY. I said "than any," so I insist that they be put in the category. They are; they are a very high-class firm; very able men, and the highest class of gentlemen, and they enjoy the profound respect and confidence of every judge in New York, both State and Federal, and of the people generally. Judge O'Gorman was one of the

greatest judges we have ever had in New York State, and Mr. Battle has been practicing for many years, and there is not a single speck on his career. That is the way those men stand in New York; I can not make that too strong; it is a fact.

Mr. CARLIN. Would you care to give us an estimate of the professional standing of the firm of Slade & Slade, if you know it?

Mr. LEVY. I do not see how I could, Mr. Chairman, because I do not know them well enough. I never heard of them before the—what is the name of the case?—the Tanzer case became a matter of public property. I did not know there was such a firm. I do not say that by way of disparagement, that because I had never heard of them that they were not a first-class firm, but I actually had never heard of them.

Mr. NELSON. What is the style or name of your firm?

Mr. LEVY. Stanchfield & Levy.

Mr. NELSON. How long have you been with them and a member of the firm?

Mr. LEVY. About six years.

Mr. NELSON. About six years?

Mr. LEVY. I have been a partner for six years. I became Mr. Stanchfield's partner immediately I joined him.

Mr. NELSON. Did you have anything to do with the case of *United States v. Rosenthal*?

Mr. LEVY. Our firm did.

Mr. NELSON. Would you mind giving us the facts in that case; I mean, so far as you can give them professionally?

Mr. LEVY. I personally had nothing to do with that, and I believe there is nothing about the facts that I should hesitate to tell you if I knew them; but it strikes me so far as any particular case that we have had, matters that were not public property would probably be privileged. However, so far as I am concerned, I had nothing to do with that case; it was not in my department.

Mr. NELSON. I know it is privileged, but there might be facts that you could give us, in a general way, without going into any privileged matter.

Mr. LEVY. I would be pleased to tell you if I knew anything about it, but that happened to be a case that I had nothing to do with. In our firm we have a great many things coming along, and we do not duplicate each other's work.

Mr. NELSON. You would not know much about the details of that case?

Mr. LEVY. Nothing.

Mr. GARD. You stated a moment ago that you were familiar with the work of the district attorney's office in New York.

Mr. LEVY. I am familiar with the kind of work that a district attorney is called upon to do in New York. I am not familiar with the precise work that the district attorney is doing at any time.

Mr. GARD. You are familiar with it, I suppose, from observation and practice in the courts?

Mr. LEVY. Yes, sir.

Mr. GARD. Have you at any time been identified with this or any preceding administration of the United States district attorney's office in New York?

Mr. LEVY. Never with any other district attorney's office or any other office. I have never held office of any kind nor had any connection with any.

Mr. GARD. Either elective or appointive?

Mr. LEVY. Neither elective nor appointive.

Mr. GARD. There is one thing that I confess that I am very greatly interested in; you have said something about the custom of bringing witnesses there. Can you give us the name of any particular person whom this district attorney, Mr. Marshall, had brought under process of a court or of a grand jury, to his own rooms for the purpose of investigation, without taking them before the grand jury?

Mr. LEVY. I can not. I do not know of a single man whom he has ever brought there. When I talked about "custom," I perhaps should have said that I am talking about the conduct of the office before he was district attorney, and particularly the conduct of the State district attorney's office.

Mr. GARD. That is what was known, I believe Judge Mayer has said, under Jerome as the "John Doe" process; is that what you mean?

Mr. LEVY. No; that is a different proposition.

Mr. GARD. That is a different process?

Mr. LEVY. That is a different process. The John Doe proceeding is an actual proceeding, directed against "John Doe," with no particular stated purpose and no defendant.

Mr. GARD. No particular stated man?

Mr. LEVY. No particular stated man.

Mr. CARLIN. Except "John Doe?"

Mr. LEVY. And, of course, that is a fictitious person, and the courts of our State have held, if I correctly understand them, that under certain sets of circumstances that proceeding is proper.

Mr. GARD. Do I understand you to say that the custom of which you speak, of district attorneys issuing process and bringing persons not before grand juries or courts but into private rooms of the district attorney's office, for questioning either by himself or by his assistants, is a continuing custom under this present administration?

Mr. LEVY. I do not know of any instance when it was done under this present administration. I have not had any case in which it was done, nor have I heard of any case in which it was done, but I have had plenty of cases in the State courts where it was done and had a few cases under the prior administration when I thought it was done. Of course I was not there.

Mr. GARD. Under the prior Federal administration?

Mr. LEVY. Exactly.

Mr. GARD. Who was the predecessor of Mr. Marshall?

Mr. LEVY. Mr. Wise.

Mr. GARD. Have you had quite a general criminal practice in the United States court?

Mr. LEVY. It is hard to answer that question because I do not know what you mean by the word "general." We do not have so many cases as cases of considerable importance. In volume, our cases are not so many.

Mr. GARD. Are you able to tell us, approximately, the proportion of so-called conspiracy indictments that the district attorney's office over there is in the habit of presenting?

Mr. LEVY. I could, perhaps, give you some information as to the growth of that form of procedure.

Mr. GARD. That would be interesting to me.

Mr. LEVY. The use of the conspiracy form of indictment, according to my recollection, started some time away back when they were after the Sugar Trust, and for a while there, under Mr. Stimson and Mr. Wise——

Mr. NELSON (interposing). Was Mr. Stimson the former Secretary of War?

Mr. LEVY. Yes, sir; the predecessor of Mr. Wise as United States attorney. For a time there it got to be that pretty nearly every indictment for a specific offense carried a conspiracy count with it, if there was more than one person involved, and then the Kissel case went up to the Supreme Court of the United States, where that form of procedure was sustained, although the Federal court (Judge Holt) had decided against it. Since that time, in practically every case of any importance that we have been connected with, there has been a conspiracy count or conspiracy indictment, and I do not mind telling you that that has been the dangerous indictment.

Mr. NELSON. I did not hear the word you used.

Mr. LEVY. Dangerous indictment.

Mr. GARD. It is dangerous because it is so indefinite and comprehensive, is it not?

Mr. LEVY. No, sir; but because the Federal law has been fairly well developed and the rules of evidence are fairly well developed, and if a conspiracy is shown, pretty nearly everything done by every member of the conspiracy is competent, whereas when you get a specific indictment as to a specific act at a specific time, the lawyer for the defense has something he can hold the prosecution down to.

Mr. GARD. Is it the practice to make first an absolute direct charge and supplement that with an indictment alleging conspiracy, in the event there is a hope of connecting someone else with it?

Mr. LEVY. No, sir; the practice is, if there is more than one defendant, that there are several indictments. There are two or more indictments. One of those indictments will be for conspiracy on the part of the defendants to do an act in violation of the United States laws, and another indictment will be for the doing of that act, which, of course, are two distinct offenses.

Mr. CARLIN. The conspiring to do is one offense, and the actual consummation is another?

Mr. LEVY. Yes, sir; and frequently the acts may not be consummated, but the conspiracy will have been consummated, and the crime under the conspiracy charge will have been made out.

Mr. NELSON. What is the purpose of including that uniformly in these criminal charges? What gain is there to the prosecution?

Mr. LEVY. It is done all over the country.

Mr. NELSON. It gives you an opportunity to go into a great many factors unrelated to the main matter.

Mr. LEVY. Frequently the prosecution meets a situation which is difficult to handle. Now, I am not a prosecuting man. I never had a case with the prosecution in my life. My cases have all been for the defense, and I can tell where it hurts. Frequently the prosecution has a difficult case to handle. It may be difficult to take one

particular act and put it beyond the shadow of a doubt, and yet the prosecution may be convinced, notwithstanding that, that a series of things were planned which were in violation of law, without being able to put its finger on any one act with any certainty, and yet have sufficient to show there was a conspiracy to violate the law. Now, by virtue of the conspiracy form of indictment, a prosecuting officer can frame an indictment which will mention several acts as overt acts, but yet the lawyer does not have to prove those overt acts. He just has to allege them. He can prove anything else. He just has to prove that the conspiracy was for the purpose stated. The acts upon which he relies to prove that conspiracy may come to his attention on the day of the trial. He may disregard every overt act alleged.

Mr. CARLIN. In other words, it is easier to convict a man of conspiracy than of specific things.

Mr. GARD. You say the practice of having the so-called conspiracy indictments has increased since the Kissel case?

Mr. LEVY. I did not come down prepared to give authoritative statements. I am simply giving my impression. I think the practice is less indulged in to-day than it was five years ago.

Mr. GARD. Less?

Mr. LEVY. Perhaps less, and yet, on every important case that I can recall, there has been a conspiracy indictment. You take the Cash Register cases, out in Ohio, with which we were identified, on appeal. There was a conspiracy charge there of the Sherman law. Take practically all of the prominent cases that I know of, involving important people or important corporations and it seems to me there has always been a conspiracy charge. In other words, if I should be confronted to-morrow by a client who is charged with the commission of a crime, under one indictment of conspiracy to commit a crime, and under another of committing certain specific acts, I should not be a bit surprised. I should expect it.

Mr. GARD. Do you know how many assistants Mr. Marshall has in his office?

Mr. LEVY. No; I do not.

Mr. GARD. Do you know who his first assistant is?

Mr. LEVY. I probably would know him if you would tell me his name. I know many of them, but I do not know how they rank.

Mr. GARD. You do not know their rank?

Mr. LEVY. I know the men who have been there and left, and the men who are still there, but I could not tell you how they rank.

Mr. GARD. Do you know of the association of investigators with this office— have you any knowledge of that?

Mr. LEVY. None at all.

Mr. GARD. That is all.

Mr. NELSON. What is the Bureau of Investigation and Inquiry?

Mr. LEVY. I could not tell you that. I do not know.

Mr. NELSON. You do not know whether there is such an institution in connection with the district attorney's office?

Mr. LEVY. I know nothing at all about that.

Mr. CARLIN. I notice that Mr. Hill, counsel for Mr. Buchanan is present. Mr. Hill, have you any questions you would like to suggest to the subcommittee?

Mr. HILL. I do not know that I have. I have been in bed all day, I had an attack of the gripe yesterday, and I have just gotten down here.

The CHAIRMAN. It has been suggested to the committee here that Mr. Marshall's office is conducted in such way as to terrorize the other lawyers in New York, and that they stand in fear of Mr. Marshall and of his office. Do you know anything of that kind of feeling among the lawyers?

Mr. LEVY. I think that is a cruel misstatement. That is absolutely untrue. There has never been a time since I have been at the bar when there was less of that indulged in as since Mr. Marshall has been district attorney.

The CHAIRMAN. It has been suggested too that no reputable lawyer in New York would dare to come down and testify voluntarily in this matter because of fear of some vengeance or retaliation on the part of his office. Do you know of such feeling?

Mr. LEVY. I can not conceive that there is any basis for that. There is no reputable lawyer in New York that would hesitate to go anywhere and testify. I could tell you of dozens who would come and testify. It is simply just a matter of taking the legal directory and turning to the names. New York, you know, is a big community.

The CHAIRMAN. Undoubtedly.

Mr. LEVY. The lawyers there are accustomed to taking care of themselves. They know, or pretend to know, what their rights are. I have never known of lawyers being afraid to go anywhere and tell what they know.

The CHAIRMAN. What class of men are eligible to become members of the New York Bar Association?

Mr. LEVY. There are two associations.

The CHAIRMAN. In your county?

Mr. LEVY. As to the association of the bar, all men who are eligible to vote.

The CHAIRMAN. What are the qualifications?

Mr. LEVY. Practicing lawyers and men in good standing. But the association of the bar, as an organization, is an organization run on very high lines. I am not a member and never applied for membership. Most of my friends are members.

Mr. NELSON. Is that a social association?

Mr. LEVY. No, sir; its president is Mr. Wickersham, and it has done great work and is doing great work in maintaining the standing and dignity of the bar. It does most, if not all the work, in the preliminaries to disbarment cases, and I believe carries through most of the disbarment cases itself.

The CHAIRMAN. It has been suggested that a man must wear a silk hat, and have other appurtenances to belong to that association.

Mr. LEVY. My own understanding is that a silk hat or silk stockings is not necessary, but that no silk hat or slouch hat would be a disqualification. It is a very high-class organization, and one that the New York lawyers are really proud of.

Mr. NELSON. What is the proceeding? What sort of scrutiny do you have to pass if you want to join?

Mr. LEVY. You have to be presented by a member and seconded and then you go up before a committee on admissions, and then it goes

through the usual form. My belief is that most anybody who is presented and seconded is elected. In other words, if you get men of good standing to present your name and men of good standing to second it, you are elected.

Mr. NELSON. Then a man is not qualified to become a member simply because he is a member of the bar? In other words, he has to be presented and approved?

Mr. LEVY. Quite so.

Mr. NELSON. And do they undertake to keep out shysters and persons of that kind?

Mr. LEVY. They maintain a very high standard.

Mr. NELSON. That means only men of the largest ability are permitted to join?

Mr. LEVY. No; it means men that are properly vouched for are admitted. There are many men who would be properly vouched for who do not care to join. Any man of proper standing practicing law in New York will be admitted.

Mr. NELSON. Assets, such as property, or social standing, or silk hats, or anything of that kind have nothing to do with it?

Mr. LEVY. No, sir; my partner is a member and does not wear a silk hat. I mean by that simply that I think they fairly conduct that association on very dignified lines.

Mr. NELSON. And each of those associations has a grievance committee—

Mr. LEVY. Yes, sir.

Mr. NELSON (continuing). Before which any practicing attorney, whether he is a member or not, can go and file charges and be heard?

Mr. LEVY. Yes, sir; they have a committee of nine in the Association of the Bar and anybody can file a charge, whether a lawyer or a layman, whether a freeman or convict—and I have known of charges to be filed by both. They are seriously considered.

Mr. CARLIN. Then there is no distinction made with reference to racial or religious matters?

Mr. LEVY. No, sir.

Mr. CARLIN. A man is not excluded because of his religious belief?

Mr. LEVY. I do not think so.

Mr. CARLIN. But he is excluded if a man not of good character?

Mr. LEVY. Yes, sir; there are men of all grades and conditions in the Association of the Bar, but they are all men of good standing. It is a very dignified body and does a great work. It provides a remarkable library, and has a very beautiful building.

Mr. HILL. Mr. Levy, I believe you stated you are not a member of that organization—the New York Bar Association?

Mr. LEVY. I am not a member.

Mr. CARLIN. Does the bar association attempt to disbar lawyers from practice who are not members of the association, just as they would those who are members of the association?

Mr. LEVY. It makes no distinction. They will entertain a charge against a nonmember or against a member without any consideration to membership. A charge is carried through to its conclusion regardless of whether the respondent be a member or not.

Mr. CARLIN. What is the fee for joining the association?

Mr. LEVY. I really could not tell you. It is a nominal fee.

Mr. CARLIN. For both associations?

Mr. LEVY. Yes, sir; I think so. It is perhaps \$100 in one and \$50 in the other. It is not a prohibitive fee.

Mr. CARLIN. Does the county association admit every person to the association who becomes a member of the bar?

Mr. LEVY. The county association is a younger body and started with the avowed purpose of embracing all lawyers in New York, and so practically everybody is invited to join, and, in fact, you would be considered as doing a favor to the association by joining, and under those auspices practically every lawyer joins the association. I am a member, and have never been near it. I have never been to the place, and do not know what they have, and I think most lawyers feel the same way about it. It is an excellent institution, growing, and doing good work. There is plenty of room for two associations.

Mr. CARLIN. But the standard does not seem to be as high.

Mr. LEVY. No, sir; the work of neither has appealed to me particularly. I have never had any occasion to feel the want of either of them.

Mr. CARLIN. We will excuse you, sir, with the understanding that if we want you we will call you again.

TESTIMONY OF MR. ALEXANDER GILCHRIST, JR., DEPUTY CLERK, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

(The witness was duly sworn by Mr. Carlin.)

Mr. CARLIN. Please give your name and address and occupation.

Mr. GILCHRIST. Alexander Gilchrist, jr. Do you want my home address or official address?

Mr. CARLIN. Both.

Mr. GILCHRIST. My home address is Suffern, Rockland County, N. Y., and my official address is 347 Post-Office Building, Manhattan, New York; clerk of the United States District Court for the Southern District of New York.

Mr. CARLIN. Can you tell us who signs the subpoenas for witnesses to appear before the grand juries?

Mr. GILCHRIST. Either myself or one of my deputies.

Mr. CARLIN. Does the statute give you power to sign the subpoenas?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Of course, I assume the list of witnesses is furnished by the district attorney's office.

Mr. GILCHRIST. Yes, sir; they are furnished us.

Mr. CARLIN. You do not summon the witnesses of your own motion before the grand jury?

Mr. GILCHRIST. No, sir.

Mr. CARLIN. You do it at the request of the office of the district attorney?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Now, in the so-called John Doe proceedings, who signs those subpoenas?

Mr. GILCHRIST. Either the clerk, myself, or my deputy.

Mr. CARLIN. What authority have you for issuing that sort of a subpoena?

Mr. GILCHRIST. Is that a legal question, as to what authority?

Mr. CARLIN. Yes; what authority of law?

Mr. GILCHRIST. I understand your question. The question never occurred to me before, but I do not see what difference there is between a John Doe proceedings and a John Smith proceedings.

Mr. CARLIN. You do not see any difference?

Mr. GILCHRIST. No, sir; I knew as a matter of law John Doe is a fictitious person. He may represent somebody, but I do not know whom.

Mr. CARLIN. You do know John Doe is a fictitious person; you know there is no such person as John Doe.

Mr. GILCHRIST. I assume that is so. That is the common interpretation among the legal profession.

Mr. CARLIN. The law makes it your duty to sign the subpœnas.

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. I would like you to give the committee the statute under which you claim the authority for issuing subpœnas in John Doe proceedings.

Mr. GILCHRIST. I can not give it offhand.

Mr. CARLIN. If we give you time, can you give it to us?

Mr. GILCHRIST. At the present moment?

Mr. CARLIN. No; at your convenience—within a week or a few days.

Mr. GILCHRIST. All right, sir; if I can, I will.

Mr. CARLIN. Tell the committee what, if anything, the district attorney's office has to do with the summoning of grand jurors?

Mr. GILCHRIST. Nothing, that I know of, sir; nothing to do with it, whatever.

Mr. CARLIN. Does the district attorney suggest to you, or has he ever suggested to you, who should constitute a grand jury?

Mr. GILCHRIST. No, sir.

Mr. CARLIN. Has he ever given you any names to summon as members of any particular grand jury?

Mr. GILCHRIST. No, sir.

Mr. CARLIN. Whose province is that?

Mr. GILCHRIST. The drawing of the jurors?

Mr. CARLIN. The furnishing of the names.

Mr. GILCHRIST. The clerk and the commissioner of jurors select the names that are put in the wheel; and one wheel, of course, contains both the petit and grand juries. There is no distinction between the two.

Mr. CARLIN. When you summon a special grand jury—

Mr. GILCHRIST (interposing). It is drawn out of the same box.

Mr. CARLIN. The same box that the regular jurors come out of?

Mr. GILCHRIST. There is no distinction between a special or regular grand jury. The list contains all the jurors, whether grand or petit.

Mr. CARLIN. That applies to petit juries, also?

Mr. GILCHRIST. Yes, sir; they come out of the same wheel.

Mr. CARLIN. Do the civil and criminal jurors come out of the same wheel?

Mr. GILCHRIST. Yes, sir; there is only one wheel, and that contains the whole list of jurors.

Mr. CARLIN. We are interested in knowing how those names get into the wheel, especially with reference to the office of the district

attorney. Does he exercise any power of suggestion or otherwise over you two gentlemen in placing the names within the wheel?

Mr. GILCHRIST. No, sir.

Mr. CARLIN. Has H. Snowden Marshall ever attempted to accomplish anything of that sort?

Mr. GILCHRIST. No, sir.

Mr. CARLIN. Has any one of his assistants ever attempted that?

Mr. GILCHRIST. No, sir. I will go so far as to say that an assistant might say, "Here is a good man to go in your list;" and I would say, "Send him to me;" but there is no man whose name has gone in that list whom I have not seen and talked to, because some time ago there was some talk about jurors——

Mr. NELSON (interposing). You say, once in a while Mr. Marshall would suggest——

Mr. GILCHRIST (interposing). No, sir.

Mr. NELSON. Who was it?

Mr. GILCHRIST. I did not say who it was. I think once that Mr. Wood suggested the name of a person to go on the list as a juror—only once, that I recall. That is my impression now. Mr. Wood once asked me—he said, "Here is a good man for a juror." I think that was his remark. I do not know who it was, or whether he was put in the wheel or not. I do not know now.

Mr. CARLIN. When you say "to go on the jury," do you mean to be put in the box to be drawn?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. You have the arbitrary power to put those names in the wheel?

Mr. GILCHRIST. With the consent of the commissioner of jurors.

Mr. CARLIN. He has the same power as you?

Mr. GILCHRIST. Yes, sir; we agree upon it.

Mr. CARLIN. How many names do you put in the wheel?

Mr. GILCHRIST. It varies at different times. There is in that wheel now about 900 names. We have, outside of that, a card system, and we have a list of about 6,000 names all carded, and we have a list now so arranged that it takes about two years before we exhaust the list and before putting the names back into the wheel. In other words, a man does not have a chance to have a call but once in two years. For instance, a man serving in 1916, his name would not go back until 1918.

Mr. CARLIN. But it is a fact that the names would go back in the wheel in 1918?

Mr. GILCHRIST. No, sir; it is not positive. We have it arranged there so that they will not be called upon, however, within two years. If a man serves in 1914, he would not go back until 1916, at least. He might never be there. It is a pure gamble. There are, for example, 900 names in the wheel. You put your hand in the wheel and draw out a name——

Mr. CARLIN (interposing). Do you know the name of the man that Wood mentioned to you?

Mr. GILCHRIST. No, sir; it would never have occurred to me except that you mentioned the fact.

Mr. CARLIN. Do you remember how long ago it has been.

Mr. GILCHRIST. I should say in the neighborhood of a year ago.

Mr. CARLIN. Do you know whether that man was ever drawn to serve on the jury?

Mr. GILCHRIST. I do not know the name or do not know whether he went in the wheel. Anybody suggesting a name to me, or who comes to me with the name of a man, I always say, "Send the man to me." If I am satisfied that he is a good man, I say to the commissioner of jurors, "Here is a good man; look him over."

Mr. CARLIN. Did you tell Mr. Wood to send the man in?

Mr. GILCHRIST. I think I did. He mentioned the name to me one day in the hall.

Mr. CARLIN. Do you remember whether you did or not?

Mr. GILCHRIST. I certainly did. I do not recall the circumstances, but it must have been done, because it is my custom.

Mr. CARLIN. Well, you must recall the circumstance, because you mention it.

Mr. GILCHRIST. Yes, sir; Mr. Wood said one day in the hall, "Here is a good man to serve on your jury," because we have trouble in getting good jurors in New York from the fact that the Borough of Manhattan has ceased to be a residential section.

Mr. CARLIN. Did you draw the grand jury that returned the indictment against Mr. Martin, Schulteis, Buchanan, and others?

Mr. GILCHRIST. When was this? Tell me the time, and I will tell you.

Mr. CARLIN. Don't you remember that indictment?

Mr. GILCHRIST. I do not recall it especially. Was it in the last year?

Mr. CARLIN. Did you ever know of that indictment?

Mr. GILCHRIST. The Buchanan indictment?

Mr. CARLIN. Yes.

Mr. GILCHRIST. I do not know about that especially.

Mr. CARLIN. Did you ever hear of that?

Mr. GILCHRIST. I have heard of the newspaper account of it. I knew of it because I took the acknowledgment of bond by Congressman Buchanan.

Mr. CARLIN. Didn't you make the necessary memorandum on the indictment when it was found?

Mr. GILCHRIST. I do not do that. That would be done by the clerk in charge of the criminal branch of the court.

Mr. CARLIN. Is that clerk your subordinate?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Do you know the name of the foreman of the grand jury which returned that indictment?

Mr. GILCHRIST. I do not, offhand.

Mr. CARLIN. Could you get it for us?

Mr. GILCHRIST. I certainly could.

Mr. CARLIN. Will you do so?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Will you furnish us the name and address of the foreman of the grand jury that returned what I designate as the Buchanan indictment, together with the names and addresses of two or three other members of the grand jury? I mean to hand the names to the clerk within the next few days.

Mr. GILCHRIST. The only thing I want is to have a memorandum of that fact, so I can recall it—so it will not slip my mind.

Mr. CARLIN. Tell us this: Do you employ the stenographer who goes into the grand jury room and takes the notes?

Mr. GILCHRIST. No, sir.

Mr. CARLIN. Who does?

Mr. GILCHRIST. My understanding is that it is a special employment under a special act. I think he is paid by the district attorney.

Mr. CARLIN. And employed by him?

Mr. GILCHRIST. The district attorney employs him. He has nothing to do with the clerk's office.

Mr. CARLIN. Are the memoranda and notes taken by the stenographer in the grand-jury room returned to your office or to the district attorney's office?

Mr. GILCHRIST. Where they are returned to I have no knowledge, but they are not returned to the clerk's office.

Mr. CARLIN. Do you have any knowledge at all of the proceedings of the grand jury when it is in session.

Mr. GILCHRIST. No, sir.

Mr. CARLIN. Who has charge of the grand jury when it is in session?

Mr. GILCHRIST. The marshal.

Mr. NELSON. The United States marshal?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. You swear the grand jury, do you not?

Mr. GILCHRIST. The deputy clerk in the court does. They are summoned to appear before the judge holding criminal court at that time, and the grand jury is sworn at the time, before the judge, by the clerk in charge of the criminal branch.

Mr. CARLIN. Is it the practice of your office to turn over to the district attorney's office subpoenas signed in blank?

Mr. GILCHRIST. At times; yes, sir.

Mr. CARLIN. You mean to say you would sign blank subpoenas, and turn them over to the district attorney's office?

Mr. GILCHRIST. Yes, sir; they furnish a list of subpoenas wanted, and we give them to them.

Mr. CARLIN. I am not speaking about subpoenas addressed to so and so. I am talking about subpoenas in blank.

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Then you do sign subpoenas not addressed to anybody?

Mr. GILCHRIST. Yes, sir; at the time. They furnish the list of the names to us later. We keep track of what we furnish to them, and they furnish the names afterwards. For example, they come and ask a subpoena for so and so, and ask for extra ones, when the office is going to close that afternoon. It is a common practice, the same as in the civil cases.

Mr. CARLIN. Does not the law make it your duty to issue the subpoenas?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Is there any authority of law for issuing subpoenas in blank, addressed to no one.

Mr. GILCHRIST. I do not know of any authority to have them filled up before the clerk signs them. It has been the practice in the courts ever since I have been connected with it.

Mr. CARLIN. Have you any statutory authority to issue blank subpoenas to anybody?

Mr. GILCHRIST. As far as my memory goes now, there is nothing in the statute that says the subpoena should be filled up or anything about it, before being signed by the clerk.

Mr. CARLIN. The statute does provide that you issue the subpoena?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Do you not think that the statute contemplates it should be a bona fide subpoena?

Mr. GILCHRIST. Oh, yes, sir.

Mr. CARLIN. Do you think you are issuing bona fide subpoenas when not addressed to anybody?

Mr. GILCHRIST. I think so.

Mr. CARLIN. Then there is nothing to save you from issuing a million of them?

Mr. GILCHRIST. Not as far as I know.

Mr. CARLIN. And you would consider that a bona fide transaction?

Mr. GILCHRIST. I think so. May I make a suggestion? Prior to the consolidation of the district and circuit courts I was connected with the old district court. They did not exercise in the district court any criminal jurisdiction. It was entirely confined to the circuit court. Our principal business there was admiralty and bankruptcy cases. It was the practice, when I went into the office, more than 30 years ago, and it still exists, to issue subpoenas to attorneys in blank because often the trial of the case came on the next day, and the attorney's office being some distance from the clerk's office, they would not have time to get the subpoenas for the witnesses to attend the following day unless gotten before. We issued them in blank. That has been the custom in my office for more than 30 years.

Mr. CARLIN. How much fee are you entitled to for issuing each subpoena?

Mr. GILCHRIST. Twenty-five cents.

Mr. CARLIN. Do you charge 25 cents for each subpoena issued in blank?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Whether ever filled out or not?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. Then you consider that a subpoena is a subpoena whether addressed to anybody or not?

Mr. GILCHRIST. Yes, sir; a subpoena in form.

Mr. CARLIN. Do you issue subpoenas for grand-jury witnesses for any one else than the district attorney's office?

Mr. GILCHRIST. No, sir; not so far as I know of personally.

Mr. CARLIN. Have you ever furnished the subpoenas when the grand jury was not in session?

Mr. GILCHRIST. I could not tell you offhand, sir. I do not know. Personally I do not know all this. I do not personally issue these subpoenas. It is done by the deputy or the principal clerk at the main desk.

Mr. CARLIN. Do you know whether it is the practice to issue subpoenas in blank for the district attorney's office when the grand jury is not in session?

Mr. GILCHRIST. I do not know.

Mr. CARLIN. Would you issue subpoenas in blank for the district attorney's office if the grand jury is not in session?

Mr. GILCHRIST. Well, the question answers itself. The grand jury is always in session in our district.

Mr. CARLIN. Do you know of any instance since Mr. Marshall has been in office where the names of grand jurors or petit jurors have, at his suggestion, been eliminated and others drawn in their stead?

Mr. GILCHRIST. No, sir; there has never been a case of that kind—absolutely not.

Mr. NELSON. How many juror commissioners are with you?

Mr. GILCHRIST. One.

Mr. NELSON. You and one more?

Mr. GILCHRIST. The commissioner of jurors and the clerk—the statute provides that the clerk and the commissioner of jurors shall draw the jurors.

Mr. NELSON. That is yourself and one other person than yourself?

Mr. GILCHRIST. Yes, sir; and he must be of the opposite political faith than the clerk.

Mr. NELSON. Who appoints him?

Mr. GILCHRIST. The judges. He gets \$5 per diem each time he attends.

Mr. GARD. Is your office a salary or fee office?

Mr. GILCHRIST. A fee office.

Mr. GARD. I rather suspected so. Can you give us an idea of how much fees you get for issuing these blank unknown subpoenas?

Mr. GILCHRIST. Twenty-five cents.

Mr. GARD. How much does that amount to? What do you get? Can you give the committee any idea as to how much you have drawn in the last year by issuing blank subpoenas for which you charged 25 cents apiece?

Mr. GILCHRIST. Perhaps you misapprehend me. The office is generally known as a fee office.

Mr. GARD. I understand that. I can readily understand your facility in issuing blank subpoenas.

Mr. GILCHRIST. The clerk is allowed to retain under the statute a sum not to exceed \$3,500 per annum out of the money in his office for himself, which will be allowed by the Attorney General. I do not know whether you are familiar with that law or not.

Mr. GARD. No; I am taking your word for it, that you are allowed 25 cents for each subpoena.

Mr. GILCHRIST. That goes into the office. For example, the United States district attorney gets a subpoena. I charge against the United States that amount—25 cents—in the name of the particular case, together with the name of the witness. We have to furnish that. We do not get the money. We get credit for it.

Mr. GARD. What do you get in actual money?

Mr. GILCHRIST. Nothing; not a cent.

Mr. GARD. When you are paid, are you paid as the result of a stated salary or from funds you collect?

Mr. GILCHRIST. We are allowed to retain a sum not exceeding \$3,500 after paying all office expenses. We have never drawn, in the history of our court, either the district court or the circuit court or the consolidated court, one penny from the Government. It has all been received from fees earned from individuals or corporations.

Mr. GARD. Now, let me understand about the criminal cases. Suppose a man is indicted in a criminal case, and subpoenas are

issued by you in blank to the district attorney. You are entitled to 25 cents a piece for those?

Mr. GILCHRIST. We are entitled to charge for them.

Mr. GARD. And they are collected from the defendant, are they not?

Mr. GILCHRIST. They do not charge the defendant anything.

Mr. GARD. What is that?

Mr. GILCHRIST. No charges are levied against the defendant.

Mr. GARD. Have you ever collected any costs from defendants in your court?

Mr. GILCHRIST. No, sir.

Mr. GARD. You never have?

Mr. GILCHRIST. No, sir.

Mr. GARD. You mean to say there is no proceeding had whereby any assessment is made for costs in the New York court against any party defendant?

Mr. GILCHRIST. In criminal cases?

Mr. GARD. Yes.

Mr. GILCHRIST. No, sir.

Mr. GARD. Nothing of that kind?

Mr. GILCHRIST. No, sir.

Mr. GARD. How long have you been connected with the department over there?

Mr. GILCHRIST. I have been connected with the district court 30 years.

Mr. GARD. Thirty years?

Mr. GILCHRIST. Of course, I started in with the old original district court.

Mr. GARD. Your appointment is by the judges there?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. The four judges combined appoint you?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. And the other man is what? The other man who has to do with the jurors is what?

Mr. GILCHRIST. The commissioner of jurors.

Mr. GARD. Is he appointed by the judges, too?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. And these subpoenas or process that you issue are issued by your clerks, under your authority?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. I understand the plan is to sign the name of the clerk—let me ask you this: Do you ever issue subpoenas in your office to anybody, or are they all issued in blank?

Mr. GILCHRIST. They are all issued in blank, practically.

Mr. GARD. All issued in blank, practically?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. In other words this is your practice: The district attorney may say, "I want some subpoenas"—

Mr. GILCHRIST (interposing). Yes, sir.

Mr. GARD (continuing). Whereupon you send up 50 or 100 blank subpoenas?

Mr. GILCHRIST. As many as they want. For example, they come and say: "We want subpoenas for use in the case of John Brown. We will send the list when we make them out." We send the subpoenas and the necessary tickets then.

Mr. GARD. You may send 50 or 100?

Mr. GILCHRIST. Yes, sir.

Mr. NELSON. What do you mean by "list"?

Mr. GILCHRIST. The list of witnesses.

Mr. NELSON. You do not require the sending of the list before issuing the subpoenas in blank?

Mr. GILCHRIST. They haven't got it ready.

Mr. NELSON. When he says, I want 20 tickets—

Mr. GILCHRIST (interposing). Yes, sir; a dozen tickets, for example.

Mr. GARD. You do not know what the subpoena is or for what it is used—you sign your name to a blank subpoena which authorizes somebody to bring somebody in, whose name may be put in there?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. Does it not strike you that is a pretty vicious form of procedure?

Mr. GILCHRIST. No, sir; it never has.

Mr. GARD. It never has occurred to you yet?

Mr. GILCHRIST. No, sir; not yet. I have never heard of it being abused.

Mr. GARD. Did you ever hear of this process of issuing blank subpoenas being used by the present district attorney, Mr. Marshall, to have persons brought to his office for examination?

Mr. GILCHRIST. I have no knowledge of that; no, sir.

Mr. GARD. Do you know, as a matter of custom, that that is so?

Mr. GILCHRIST. No, sir; not so far as I know. The subpoenas, as I have seen them, will bear on their top, for example, the United States subpoenas—a blank for the name of the witness, "will report to room 208, district attorney's office," which is the clerk's office of the criminal branch—the district attorney's office. They report there before they try the case. Down below he will be required to attend the trial before so-and-so in the case of so-and-so. On top they put with a rubber stamp, "Witness will report at 208" at a certain time.

Mr. GARD. That may be the district attorney's office?

Mr. GILCHRIST. That is his office.

Mr. GARD. In other words, they report there before they go to the grand jury?

Mr. GILCHRIST. Before they go there, they report there; yes, sir.

Mr. GARD. Have you ever issued any process calling upon them to report at 208 without telling them to go anywhere else?

Mr. GILCHRIST. That is where they go to, but they report at a certain place—the body of the subpoena bears the title of the case, the name of the court, and where it is to be held.

Mr. GARD. As far as your office knows, when you issue a subpoena in blank, and give it to the district attorney, you do not know, or your office does not know, whether that person is to be called before a case in court or called before the grand jury, or called to room 208?

Mr. GILCHRIST. No, sir.

Mr. NELSON. Why could they not simply insert, as far as you know, "Call at 49 Broadway," or anywhere else?

Mr. GILCHRIST. He can put in anywhere he likes, but the blank calls for the courthouse. It is printed that way.

Mr. GARD. But he can put in any place he wants to

Mr. GILCHRIST. As I say, the rubber stamp on top says, "Report to room 208."

Mr. GARD. When your name is on, he would have authority to say, "Report at 340 Broadway" or some other number?

Mr. GILCHRIST. In the memorandum at the top it shows—but it is printed in the body of the subpoena, "Attend the United States courthouse building" at such a court in the case of so-and-so. The memorandum on the top is where the witness is to attend.

Mr. GARD. It is very interesting to know this. That is the way your clerk's office issues subpoenas right along?

Mr. GILCHRIST. Yes, sir; any subpoenas; yes, sir.

Mr. NELSON. I will ask you a few questions in a preliminary way to see whether you possibly have information in a more detailed way. You are the chief clerk?

Mr. GILCHRIST. Yes, sir.

Mr. NELSON. And you appoint your assistants?

Mr. GILCHRIST. Yes, sir.

Mr. NELSON. How many have you?

Mr. GILCHRIST. In all, including the stenographer and all, 20.

Mr. NELSON. How many assistants—I mean assistant clerks?

Mr. GILCHRIST. You mean deputy clerks?

Mr. NELSON. Yes.

Mr. GILCHRIST. Three.

Mr. NELSON. Do you come in contact in any way with the district attorney's office, except as he asks for subpoenas?

Mr. GILCHRIST. Well——

Mr. NELSON (interposing). That is, so that you would know what is going on in his office?

Mr. GILCHRIST. No, sir.

Mr. NELSON. You would not have knowledge of cases pending before him, or his practice—the way he conducts his office?

Mr. GILCHRIST. No, sir. Of course, I might, for example, go down to his office. Some business might take me down that way.

Mr. NELSON. What do you do personally—your particular line of work?

Mr. GILCHRIST. My line of work is I sign all checks and sign papers, certify copies of papers, o. k. orders for the judges, draw the jurors, open and answer correspondence, etc.

Mr. NELSON. You would not have occasion to particularly know the relations of Mr. Marshall's office to other firms—for instance, his old firm?

Mr. GILCHRIST. No, sir; I would not know that.

Mr. NELSON. You would not know either how he quizzes witnesses that are brought up to room 208?

Mr. GILCHRIST. No, sir.

Mr. NELSON. You do not pay any attention to that at all?

Mr. GILCHRIST. No, sir; I have not got the time.

Mr. NELSON. Have you read these charges of Mr. Buchanan against H. Snowden Marshall?

Mr. GILCHRIST. I have not.

Mr. NELSON. Have you seen them commented on in the newspapers?

Mr. GILCHRIST. I have seen some comment.

Mr. NELSON. Have you any detailed information or knowledge at all with reference to those charges?

Mr. GILCHRIST. I have never seen, in detail, what the charges are. I have simply seen them in the newspaper accounts. I just sketched through them. As to what they are, I have no knowledge.

Mr. GARD. You said a moment ago that Assistant District Attorney Wood had requested you to put a certain man's name in the box or wheel.

Mr. GILCHRIST. He suggested there was a good man for a juror. I do not recall the circumstance as to what I told him. I no doubt told him, as I would, ordinarily, as you would say to a man, "Gilchrist, here is a good man for your jury." I would say, "Send him along." That is my custom. However, there is no man that goes into the wheel that I do not talk to and look him over.

Mr. GARD. How many men are drawn for each particular grand jury?

Mr. GILCHRIST. We draw 23. We draw upward of 75 from which 23 are selected.

Mr. GARD. Twenty-three are selected for grand-jury service?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. Suppose there are vacancies in the panel by reason of persons not appearing or through sickness or excuse. How do you fill them?

Mr. GILCHRIST. We have never had a case where we have not had sufficient for a grand jury out of the 75 we draw. In other words, we have gotten 23 out of the first 75 names drawn. There has never been a case where there has been a failure to get the 23 out of the 75 names drawn.

Mr. GARD. In the case of petit juries, how are the vacancies filled?

Mr. GILCHRIST. We have had one case only that I recall, and that was the late New Haven case, with which you are no doubt familiar, where we had to draw extra jurors.

Mr. GARD. Have you ever filled any by calling from the bystanders, or ever select any from a list given by the district attorney or anybody?

Mr. GILCHRIST. No, sir.

Mr. GARD. They are always drawn from the wheel?

Mr. GILCHRIST. Yes, sir. Of course, I mean in my time—since the consolidation of the court.

Mr. GARD. When was that?

Mr. GILCHRIST. Four years ago—January, 1912. I do not recall a case where it was done. I have heard of it done in the old circuit court, drawing from the bystanders in petit jury cases. Personally I have no knowledge of it. I have no knowledge of a case since January, 1912, where there has been a criminal jury drawn from bystanders.

Mr. NELSON. You have been clerk for 30 years?

Mr. GILCHRIST. No, sir; I have been connected with the clerk's office for 30 years.

Mr. NELSON. Was this practice of issuing subpoenas in blank in vogue before you came to the office?

Mr. GILCHRIST. It has always been so.

Mr. NELSON. Is that the practice in the State court?

Mr. GILCHRIST. They do not have to issue the subpoenas. The attorneys issue the subpoenas. They do not issue them from the clerk's office. The attorneys can issue the subpoenas themselves.

Mr. GARD. I wish you would give me an idea of the fees collected from the issuance of the subpoenas for a year.

Mr. GILCHRIST. Of course I can not give it out of my head.

Mr. GARD. About how much do they amount to in a year, in the way you issue them, in blank form addressed to nobody and signed by you, going out when they desire to any place in the State of New York—how much do your fees amount to at 25 cents an issue?

Mr. GILCHRIST. Do you want to know, for example, the past year?

Mr. GARD. Yes; I should like to know that.

Mr. GILCHRIST. Of course that is here in Washington. The accounts in the office of the Attorney General will show that.

Mr. GARD. I thought perhaps you could give that from your recollection.

Mr. GILCHRIST. It is not very much, but I do not know what it is.

Mr. GARD. Can you tell me, approximately?

Mr. GILCHRIST. Offhand, I should say—and it is a pure guess—\$600 or \$700.

Mr. GARD. \$600 or \$700?

Mr. GILCHRIST. I think so; yes, sir.

Mr. GARD. Oh, surely it is more than that.

Mr. GILCHRIST. I do not think so; that is my guess.

Mr. GARD. At 25 cents apiece that would only be 2,400 processes in a year.

Mr. GILCHRIST. Well, you may have, for example, on the list 10 names, and you will only issue 1 subpoena and 10 tickets. The tickets we do not charge anything for at all.

Mr. GARD. I do not understand what you mean by "tickets."

Mr. GILCHRIST. That is practically a copy of the subpoena. It does not bear the signature of the clerk or the seal of the court.

Mr. GARD. Let me understand that. You issue a process, and, for instance, you have 10 names on the original subpoena—

Mr. GILCHRIST (interposing). Yes, sir.

Mr. GARD (continuing). And you issue one subpoena and nine tickets, is that it?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. Or do you issue 10 tickets?

Mr. GILCHRIST. They are issued to anybody who may be named.

Mr. GARD. But the tickets—

Mr. GILCHRIST (interposing). Are served upon the witnesses and the original shown—the original subpoena.

Mr. GARD. Then you serve a ticket on him?

Mr. GILCHRIST. Yes, sir; we issue the original under the signature and seal of the clerk of the court.

Mr. NELSON. You show him the subpoena and give him a ticket?

Mr. GILCHRIST. Yes, sir; the name is on the subpoena.

Mr. GARD. Each witness gets a ticket—you show him, for instance, the original subpoena and hand him a ticket?

Mr. GILCHRIST. That is the modus operandi; yes, sir.

Mr. GARD. That ticket may direct him to come to 208 Post Office Building, or to 300 Broadway, or any other place in New York?

Mr. GILCHRIST. Maybe; yes, sir.

Mr. NELSON. You say you issue the original subpoenas, but that you issue them in blank, and he can put in as many names as he wants?

Mr. GILCHRIST. Yes, sir.

Mr. NELSON. But he has to tell you how many names?

Mr. GILCHRIST. We have to have the number to show to the United States Government.

Mr. NELSON. You want to know how many tickets to issue?

Mr. GILCHRIST. He says he wants half a dozen tickets, for example.

Mr. NELSON. What difference does that make—the number of tickets?

Mr. GILCHRIST. It doesn't make any difference.

Mr. NELSON. He will use them or not, as he sees fit.

Mr. GILCHRIST. Yes, sir.

Mr. NELSON. You give him a blank subpoena and he can put on 10 or 20 names, as he sees fit?

Mr. GILCHRIST. Yes, sir.

Mr. CARLIN. I understand you want to take the first train out of town. I will ask you to send to us the information I asked for.

Mr. GILCHRIST. I will be most happy to do so.

Mr. CARLIN. With that understanding, we will excuse you, with the understanding that we can call you if we should want you again. Are there any questions you would like to ask, Mr. Hill?

Mr. HILL. Yes, sir; I have a few questions.

Mr. CARLIN. Very well.

Mr. HILL. Mr. Gilchrist, under this custom of issuing blank subpoenas that you have over there in your court, do you know whether or not at any time the witnesses who are in court for the purpose of testifying might not have been subpoenaed under a grand-jury subpoena to 208—it could happen, could it not?

Mr. GILCHRIST. I did not get the drift of your question.

Mr. HILL. I say, under your method of issuing blank subpoenas, there would be no difficulty for persons having the blank subpoena, with the names of witnesses to testify in an actual trial, taking them into room 208?

Mr. GILCHRIST. Oh, no.

Mr. HILL. Do you know whether that is done?

Mr. GILCHRIST. No, sir; I do not know that.

Mr. HILL. How long have you been clerk in your present capacity?

Mr. GILCHRIST. Three years.

Mr. HILL. Since Mr. Marshall has been district attorney, or before that time?

Mr. GILCHRIST. I think Mr. Wise was United States attorney when I came there.

Mr. HILL. You were clerk a little before Mr. Marshall was appointed?

Mr. GILCHRIST. Yes, sir.

Mr. HILL. Now, that character of abuse could happen under that form of blank subpoenas?

Mr. GILCHRIST. Yes, sir.

Mr. HILL. Anything could happen?

Mr. GILCHRIST. Yes, sir.

Mr. HILL. Now, you have a stenographer, do you, in the grand jury room, when they are taking testimony?

Mr. GILCHRIST. I understand the attorney does. I do not.

Mr. HILL. He makes a complete report of the evidence given before the grand jury?

Mr. GILCHRIST. I have no knowledge any more than what is now going on here. I never was in the grand jury room, except once, in my life, and that was as a witness.

Mr. HILL. Some reference was made to Mr. Buchanan's indictment. At the time he was indicted, did they have a reporter taking down the evidence given by the witnesses?

Mr. GILCHRIST. I have no knowledge.

Mr. HILL. That was the custom?

Mr. GILCHRIST. Yes, sir.

Mr. HILL. Who keeps the report of that evidence?

Mr. GILCHRIST. I suppose the district attorney. It does not come to the clerk's office.

Mr. HILL. When an indictment is found, is there any indorsement of the witnesses who appeared before the grand jury on the back of the indictment?

Mr. GILCHRIST. I think there is. You will have to ask the clerk of the criminal branch, who is here now.

Mr. CARLIN. Is he here?

Mr. GILCHRIST. Yes, sir.

Mr. HILL. Is it the law to have an indorsement of the witnesses appearing before the grand jury, appear on the indictment, or have you any knowledge of that?

Mr. GILCHRIST. I do not know.

Mr. HILL. The district Federal court there follows the procedure of the State courts, very largely?

Mr. GILCHRIST. Yes, sir.

Mr. HILL. You do not know whether that is the custom in the Federal court or the State court, do you?

Mr. GILCHRIST. I do not know much about criminal law. To tell the truth, I do not want to have anything to do with it.

Mr. HILL. That subpoenaing in John Doe proceedings—the fictitious John Doe—may lead to a kind of third degree, a sweating process, in any particular room they wanted to take the witnesses, even if subpoenaed in court by the opposite side, for the defense or the prosecution?

Mr. GILCHRIST. That may be so.

Mr. HILL. You never heard of it?

Mr. GILCHRIST. No, sir.

Mr. HILL. There is nothing to prevent it, is there?

Mr. GILCHRIST. No, sir.

Mr. GARD. Do you object to telling me what your occupation was before you became identified with this office?

Mr. GILCHRIST. I was practicing law. I was a clerk in a law office, and had been admitted to the bar.

Mr. GARD. You have been identified in some respect with this particular office for 30 years?

Mr. GILCHRIST. Yes, sir.

Mr. GARD. Continuously?

Mr. GILCHRIST. Continuously; yes, sir. I am in the thirty-third year now, to be accurate.

EXHIBIT No. 23, FEBRUARY 9, 1916.

NEW YORK CITY, February 10, 1916.

Hon. CHARLES C. CARLIN,
House of Representatives, Washington, D. C.

DEAR SIR: In compliance with your request of yesterday, I would state that the amount charged to the Government for subpoenas issued on behalf of the United States for the year 1915, as shown by our quarterly reports to the Attorney General, was \$795.25.

The following are the names and addresses of the foreman and several of the members of the grand jury which indicted Mr. Buchanan:

Aldrich J. Dale (foreman), importer, 710 Broadway, 1873 Seventh Avenue.
Joel D. Barber, architect, 569 Fifth Avenue, 4 East Eighty-fifth Street.
Fred M. Stevens, manager, 67 West End Avenue, 225 West End Avenue.
Arthur Wade, broker, 55 Liberty Street, 69 West Eighty-eighth Street.
William Witherell, chemicals, 7a Produce Exchange, 93 West One hundred and third Street.

Respectfully,

ALEX. GILCHRIST, JR., *Clerk.*

**TESTIMONY OF WILLIAM H. LEARY, CLERK IN THE OFFICE
OF THE CLERK OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK.**

Mr. GARD. Have you been sworn?

Mr. LEARY. Yes, sir.

Mr. NELSON. You are the deputy clerk?

Mr. LEARY. No, sir; I am a clerk in the United States district court clerk's office.

Mr. NELSON. That is your title?

Mr. LEARY. Yes, sir.

Mr. NELSON. You have charge of the criminal division?

Mr. LEARY. Yes, sir.

Mr. NELSON. What was your occupation before you were appointed to this place?

Mr. LEARY. Well, after I left school I went to the New York Bar Association as clerk in the library. From there I was appointed, under Gen. Henry L. Burnett—

Mr. NELSON. Do you not want any details; just generally—are you a lawyer by profession?

Mr. LEARY. No, sir.

Mr. NELSON. How old are you?

Mr. LEARY. Thirty-five.

Mr. NELSON. How long have you been deputy clerk in the clerk's office?

Mr. LEARY. I was deputy clerk under Shields when he was clerk of the court—the circuit court—but since the courts have been consolidated I am a clerk.

Mr. NELSON. What is the practice in issuing subpoenas—do you have anything to do with them?

Mr. LEARY. The subpoenas for individuals or the Government?

Mr. NELSON. Subpoenas for witnesses.

Mr. LEARY. I mean on behalf of the Government or defendants.

Mr. NELSON. On behalf of the Government.

Mr. LEARY. Well, the practice is, with the issuance of subpoenas, that they come up to the clerk's office. Sometimes they have their own subpoena tickets, but they come to the clerk's office to get the

originals, both for witnesses before the grand jury and witnesses before the court.

Mr. NELSON. What is your particular line of duty—what do you do?

Mr. LEARY. Well, I look—I run the criminal part of the court and keep the dockets of that part and the minutes of that part, and I swear in the grand jurors. I keep the minutes and dockets of that part. I think I do all the work of the criminal part of that court.

Mr. NELSON. You are not familiar with cases pending in the courts?

Mr. LEARY. Criminal cases?

Mr. NELSON. Yes.

Mr. LEARY. Yes, sir; I am in a general way familiar with all of that. When the grand jurors hand the indictments, they are handed to the court and handed back by the court to me and I file them and docket them and keep them in a separate case.

Mr. NELSON. Do you go into the grand jury room when a case is pending there?

Mr. LEARY. No; I have not been in the grand jury room but twice—no, sir; I have never been in there when they were in session. I never had occasion to go there.

Mr. NELSON. Is there any stenographer there in the grand jury room?

Mr. LEARY. The stenographer takes the minutes.

Mr. NELSON. You do not know what goes on in the grand jury room?

Mr. LEARY. No, sir; I do not. I know there is a stenographer in there taking notes when a hearing is on there. I have seen him come out, when they are voting on a bill.

Mr. NELSON. Do you recall an indictment against Buchanan and others?

Mr. LEARY. Yes, sir.

Mr. NELSON. Do you know the foreman of that grand jury?

Mr. LEARY. I thought it was Dale. It was a grand jury sworn in by Judge Hough in 1915.

Mr. NELSON. If you saw a list of the grand jurors, could you pick out the name of the foreman?

Mr. LEARY. I think—I am almost positive that is the grand jury [after examining the list] and the foreman was John Dale.

Mr. NELSON. Do you know the addresses?

Mr. LEARY. No, sir; except as it appears here. Evidently this was taken from my minutes.

Mr. NELSON. Have you the addresses in your minutes?

Mr. LEARY. It is on here.

Mr. NELSON. What is it?

Mr. LEARY. 710 Broadway and 1873 Seventh Avenue.

Mr. CARLIN. Those are his business address and his home address?

Mr. LEARY. Yes, sir.

Mr. CARLIN. You do not know whether he was foreman of the grand jury or not?

Mr. LEARY. I do not know if this was the foreman of the grand jury that indicted Buchanan, but I know he was foreman of a grand jury, and I am almost positive he was foreman of the grand jury that indicted Buchanan. That grand jury—

Mr. CARLIN. Do you know what witnesses were before that grand jury?

Mr. LEARY. No, sir; I did not have occasion to know that. I know we keep a record. The deputy clerk keeps a record of the subpoenas issued, but we keep no record of the witnesses summoned before the grand jury.

Mr. GARD. You started a minute ago to say you had not been in the grand jury room but twice in how many years?

Mr. LEARY. Yes, sir; in 15 years. I have been in the ante room but never in the grand jury room.

Mr. GARD. You were in there twice in 15 years?

Mr. LEARY. Yes, sir; for instance, at 1 o'clock, if the district attorney tells the judge the grand jury wants to come down and 1 o'clock comes along and they don't come down, I will go up, and ask one of the assistants to bring them down, that the judge was waiting. I have never been subpoenaed before the grand jury, I never had any occasion to go there.

Mr. GARD. And this anteroom——

Mr. LEARY (interposing). The witnesses wait in the anteroom.

Mr. GARD. And that is where you stayed?

Mr. LEARY. Yes, sir.

Mr. GARD. About these processes: We have heard—and I suspect your idea will be the same—the subpoenas, as issued in the criminal division, are issued immediately by you?

Mr. LEARY. By me directly, sir?

Mr. GARD. Yes.

Mr. LEARY. No, sir; I don't issue them. The criminal court that I am in will run practically 11 months in the year, from, say, the 1st of October until the 1st of the following August. They will run 10 or 11 months continuously—that is, in the court room—but there is a clerk and a deputy clerk at the window, who issue the original subpoenas for the district attorney's office.

Mr. GARD. Is it the same way about grand jurors' subpoenas?

Mr. LEARY. Yes, sir.

Mr. GARD. In other words, Mr. Gilchrist did——

Mr. LEARY (interposing). It is the same with any subpoena.

Mr. GARD. Mr. Gilchrist said they issued a lot of subpoenas in blank for the district attorney who filled in the names at such times and places as he wanted.

Mr. LEARY. Yes, sir; that is true of all subpoenas.

Mr. GARD. At the top he said they had "Report at room 208," which is the office of the district attorney. Have you seen that on subpoenas, too?

Mr. LEARY. No, sir; but I have seen a card requesting witnesses to call at the district attorney's office.

Mr. GARD. You have seen that?

Mr. LEARY. Yes, sir; I have seen some kind of a little card.

Mr. GARD. Were those grand jury witnesses?

Mr. LEARY. No, sir; I think that was a little request card, "You are hereby requested to call at the United States district attorney's office," and so and so.

Mr. GARD. Were those witnesses appearing before the grand jury or just to come before the office?

Mr. LEARY. That I could not say.

Mr. GARD. As to these request cards, did they bear the signature of the clerk?

Mr. LEARY. For instance, if they requested you to come before the district attorney's office, I might see your request card but I would not know whether you were subpoenaed legally as a witness before the court or grand jury.

Mr. GARD. I want to know in reference to this request card whether that is a request from the district attorney or does it bear the signature of the clerk of the court?

Mr. LEARY. No, sir; I think it bears the name of the district attorney "John Doe, United States district attorney."

Mr. GARD. I wish you would give me, according to your recollection, the contents of those cards—just about the contents.

Mr. LEARY. Well, now I recall this, that "You are hereby requested to appear before the United States district attorney, room blank, at such and such a day." I can not recall whether the title of the case was put in there or not.

Mr. GARD. Does it say for what purpose?

Mr. LEARY. I will tell you. I have seen several of those witnesses. I have seen them wandering around the hall, and they have drifted into the criminal court room, and they would ask me where they were to go, and then I would see the number of the room on the card. That is where I saw that.

Mr. NELSON. Might not that number be on the subpoena?

Mr. LEARY. Yes; but I think on the request card it was there.

Mr. GARD. Are these request cards served by some officer of the court?

Mr. LEARY. I do not know how the district attorney serves them. I would say—

Mr. GARD (interposing). What has your office to do with the request cards?

Mr. LEARY. Nothing.

Mr. GARD. Do they come from your office?

Mr. LEARY. No, sir.

Mr. GARD. Are they signed in your office?

Mr. LEARY. No, sir; for instance, they wanted you to appear in the district attorney's office and did not want to subpoena you. If they thought you would come without being subpoenaed, they would send you a card, and you would come along down; but if you did not, they would get out a subpoena. That is my theory.

Mr. GARD. That is your theory?

Mr. LEARY. Yes; I was in the district attorney's office, I think, about five or six years—four years, anyway—under Gen. Henry L. Burnett and under Mr. Stimson, and I was in charge of the criminal work in the district attorney's office. We did not have cards then. We had a separate trial subpoena for their appearance in court, or the straight jury subpoena for appearance before the grand jury—only those two forms.

Mr. GARD. How lately has that ticket been in vogue?

Mr. LEARY. I think the first time I saw a witness with one of these tickets was three years ago. I think at that time Mr. Wise was district attorney.

Mr. GARD. Before he was district attorney?

Mr. LEARY. While he was district attorney.

Mr. GARD. Have they been continued under Mr. Marshall?

Mr. LEARY. I do not know. I have not seen them around.

Mr. GARD. How many have you seen?

Mr. LEARY. I have a faint recollection of having seen one or two.

Mr. GARD. A faint recollection?

Mr. LEARY. I am positive, if I can make it any stronger.

Mr. GARD. Oh, use your own choice of language. I am just repeating what you said.

Mr. LEARY. I am positive I saw one.

Mr. GARD. When was that?

Mr. LEARY. A couple of years ago, when Mr. Wise was district attorney. I think they are in use yet.

Mr. GARD. Have you seen any while Mr. Marshall has been district attorney?

Mr. LEARY. No, sir; I do not recall that. The district attorney and the assistant district attorneys are on the second floor, and the criminal court is on the third floor.

Mr. GARD. Where is the grand-jury room?

Mr. LEARY. On the fourth floor. The district attorney is on the second floor, and the criminal court room is on the third floor, and the grand-jury room on the fourth floor.

Mr. CARLIN. What is on the ground floor?

Mr. LEARY. That is the post office. They call one flight up the second floor. The district attorney has the greater part of that floor, with two or three civil courts.

Mr. HILL. You say when the indictments are returned you have charge of them in your office?

Mr. LEARY. Yes, sir.

Mr. HILL. You have also charge of the minutes made by the clerk or the stenographer?

Mr. LEARY. No, sir; they are not filed, and they have always held that they are private minutes, and no one is ever permitted to see them. No judge would ever let a man inspect the minutes.

Mr. HILL. You have no means of knowing who was appearing before the grand jury?

Mr. LEARY. No, sir; no one except the district attorney would know that.

Mr. HILL. He has a stenographer there to take down the testimony of the witnesses and make a complete report of the testimony, and he keeps that himself?

Mr. LEARY. If it is written out, he does.

Mr. HILL. The stenographer usually writes them out, or the minutes would not be worth anything in shorthand to anyone, would they?

Mr. LEARY. For years they did not have any stenographer, but I understand in recent years, in important cases, they have a stenographer.

Mr. HILL. Do you remember the Buchanan case—whether they had a stenographer or not?

Mr. LEARY. No, sir; I do not.

Mr. HILL. They did not indorse the witnesses on the back of the subpoena?

Mr. LEARY. No, sir; not in the Buchanan case or any other.

Mr. HILL. According to the practice of the court, they have no way for a person charged with a crime being advised as to the names of the witnesses against him before he goes to trial?

Mr. LEARY. No, sir; there have been motions made in several cases, but they have been refused. These motions have been made before different judges, but always denied.

Mr. HILL. Your Federal court follows the State practice?

Mr. LEARY. I think in the State courts if a man has not had the preliminary examination before what we call the city magistrate—if he is indicted without the preliminary examination, the witnesses' names are indorsed on the back of the indictment, because I have frequently seen lawyers come in and take the indictment and the first thing they do is to turn it over to see if the witnesses' names are indorsed on the back.

Mr. HILL. That is the State practice?

Mr. LEARY. Yes, sir; if a man has not had a preliminary examination in the State courts the witnesses are indorsed on the back. We have no such practice.

Mr. HILL. Then the Federal court does not follow the rule in the State court?

Mr. LEARY. No, sir.

Mr. HILL. You think there is no way, under your practice, for a fellow to know—

Mr. LEARY (interposing). There is absolutely no way to find out who the witnesses are who appear against him until he appears for trial.

Mr. HILL. And all courts in all cases where that has been demanded by the defendants have consistently refused the demand?

Mr. LEARY. It has never been granted in 15 years and of that I positively know. Motions have been made many times, but denied many times by different judges.

Mr. HILL. You have never seen a list of the witnesses who appeared in the Buchanan case?

Mr. LEARY. No, sir; nor in any other case.

Mr. HILL. Did you issue the subpoenas for the witnesses who appeared before that grand jury?

Mr. LEARY. They must have been issued from our office.

Mr. HILL. Issued in blank?

Mr. LEARY. Yes, sir; for instance you come and ask for two subpoenas in any case. They do not require you to file the name. You ask them for the original subpoena and five or six tickets and pay for them, and away you go.

Mr. HILL. Does the district attorney pay for the subpoenas?

Mr. LEARY. No, sir; but we are supposed to charge the Government for the subpoenas.

Mr. HILL. You get it back out of the costs you collect from the court?

Mr. LEARY. We render a bill to the Attorney General every six months or so. That is the way we are supposed to be paid. When we issue bench warrants or subpoenas or anything on behalf of the United States, we send them bills for that.

Mr. HILL. So, in the indictment to which I call your attention—or rather the committee calls your attention—the record made there by the reporter is kept by the district attorney?

Mr. LEARY. Yes, sir.

Mr. HILL. And the names of the witnesses who appeared before that grand jury—you never issued subpoenas for them yourself?

Mr. LEARY. No, sir; not me personally. I have nothing to do with the issuing of them. We have a clerk there who issues them and keeps track of the fees coming in, etc.

Mr. HILL. So, the subpoenas issued to bring witnesses before that grand jury, and all grand juries, are returned to your office after they are served, are they not?

Mr. LEARY. Well, I do not know about that.

Mr. HILL. What is their custom in handling the subpoenas that have been issued? Do they make a return to your office?

Mr. LEARY. No, sir; the marshal makes a return to the district attorney.

Mr. HILL. Does the clerk ever get that in the minutes?

Mr. LEARY. I have seen hundreds of subpoenas around there filed away, but I have not seen any subpoenas returned by the marshal in years. If they are returned, I do not know to whom they are returned.

Mr. HILL. As far as you know, they can put down as many names on the subpoenas as they want and tear the subpoena up, and then there would be no record of this afterwards?

Mr. LEARY. Now, my idea about that subpoena business is this: I know the question you are asking, and I have always understood that these subpoenas should be returned to the clerk's office. Whether they are doing that now or not I do not know, but I have seen hundreds of subpoenas returned to the clerk's office, but I have not seen them in some years.

Mr. HILL. As a clerk, transacting business there in that court, would you say that the subpoenas which were issued in the Buchanan case—I refer to that because we have been talking about it, but it might happen in any other case—will you say that I or anyone could go down there and examine the records of the returns of those subpoenas and find the names of the witnesses who appeared before the grand jury which brought this indictment, in the clerk's office?

Mr. LEARY. I would say no, as far as I know.

Mr. HILL. You think that is true, that I nor anybody else could find that out from any minutes in the clerk's office?

Mr. LEARY. If those subpoenas have been returned to the clerk's office they are there, but I believe—I have not seen any subpoenas returned in a long time. There was a time when I was deputy clerk, under Mr. Shields, when I used to get those subpoenas, and I have filed hundreds away, but I have not received any for three or four years, and I do not know whether the district attorney gets them or the clerk gets them or somebody else gets them and files them away, but it is my understanding that the subpoenas issued out of the clerk's office should be returned. You see, gentlemen, I am just a clerk there. I am not the clerk or the deputy clerk. It is not my business.

Mr. HILL. Is it your best judgment those subpoenas have been returned or never have been returned?

Mr. LEARY. I do not think they have been returned for the last few years. I may be wrong. When I was deputy clerk under Mr. Shields I used to see hundreds of them.

Mr. HILL. You would be likely to see them, would you not?

Mr. LEARY. Yes, sir; if they pertain to the criminal business, they would be referred to me.

Mr. HILL. You have never seen them for a long time?

Mr. LEARY. For years.

Mr. HILL. Not since Marshall was district attorney?

Mr. LEARY. Nor before.

Mr. HILL. I do not care about that. I am only asking about when he was attorney.

Mr. LEARY. No, sir; they may have been returned and filed in the clerk's office, but I have not seen them. I have not seen the subpoenas.

Mr. HILL. If I should go down there to your office, or to whoever is in charge of the criminal division, and ask to look at your minutes for the returns of subpoenas issued in any criminal case recently, would I be able to find it, in your judgment?

Mr. LEARY. If they sent you to me—and they would send you to me—I would have to tell you I do not know where they are.

Mr. HILL. You would have to tell me you did not know anything about that?

Mr. LEARY. Yes, sir.

Mr. HILL. What is the practice—you issue the subpoenas and they are never returned, and you do not know who appears before the grand jury?

Mr. LEARY. No, sir; no subpoenas are issued from my office. I have seen them come up there after they are signed and sealed—two or three or maybe half a dozen at a time. But where they go and where the original goes I do not know. They may be returned, but if you went up there about anything to do with the criminal court they would send you to me, and I would have to tell you I do not know, and I would have to send you to Gilchrist.

Mr. HILL. He does not have anything to do with the criminal part, does he?

Mr. LEARY. He is the clerk, and they are all returnable to him, under my understanding. It seems to me to be very funny, and the more I think about it the funnier it seems to me.

Mr. CARLIN. You pay the witnesses a per diem, do you not?

Mr. LEARY. Yes, sir; they are allowed \$1.50 a day and 5 cents a mile.

Mr. CARLIN. What is the evidence of his attendance?

Mr. LEARY. If they are paid—if they have their voucher or subpoena ticket O. K'd, they go into the district attorney's office, and the voucher is made up and signed by the assistant district attorney and sworn to before the clerk or the United States commissioner, and then they take those vouchers around to the marshal's office.

Mr. CARLIN. Who issues the witnesses' tickets?

Mr. LEARY. That is a subpoena ticket. It is really a cardboard—a regular subpoena, that is what it is, but we call them tickets to distinguish from the original.

Mr. HILL. It is a duplicate?

Mr. LEARY. Yes, sir; and a voucher is made up in the district attorney's office and taken to the marshal's office, and they are paid there.

Mr. CARLIN. His name appears there?

Mr. LEARY. Yes, sir; his name appears on the vouchers, and every three months those vouchers are returned.

Mr. CARLIN. Is not that evidence of the witnesses who appeared?

Mr. LEARY. Yes, sir; but many witnesses appear who do not get paid.

Mr. CARLIN. But these are in the court now?

Mr. LEARY. Yes, sir.

The CHAIRMAN. That is the record, then, of the witnesses that appeared and were paid?

Mr. LEARY. Yes, sir.

The CHAIRMAN. In various cases?

Mr. LEARY. Various casés; yes, sir.

The CHAIRMAN. I was about to draw the conclusion awhile ago that when subpoenas were issued and the witnesses called upon to testify, that after that you never knew who they were, from the records, but, of course, if you pay him money, of course you must have a record of that?

Mr. LEARY. Yes, sir; we get that voucher back.

Mr. CARLIN. As a matter of fact, does not the marshal in whose hands the subpoena is placed make a return of the persons upon whom process has been had and those upon whom process has not been had?

Mr. LEARY. Yes, sir; but as I understand the practice in civil cases and in equity cases, the marshal returns the subpoena back to the clerk's office?

Mr. CARLIN. That is the place where he is supposed to return them. The clerk is the clerk of the court.

Mr. LEARY. Yes, sir.

Mr. CARLIN. And of course the return is made to the clerk of that court.

Mr. LEARY. But I do not think he makes a return of the subpoenas issued for the district attorney.

Mr. NELSON. You do not keep a record of witnesses to whom subpoenas are issued, or the witnesses who receive pay in any particular proceeding—it is just general. In other words, if an inquiry were made what witnesses were paid in the case of the United States v. John Doe, you would not know what particular witnesses were paid in that case, would you?

Mr. LEARY. If you could give me the time to do it, I could——

Mr. NELSON (interposing). You have to have time to go and try to dig up the vouchers?

Mr. LEARY. Yes, sir; where he had been paid before the United States marshal.

Mr. NELSON. The voucher will show the title of the case, will it not?

Mr. LEARY. Yes, sir; and where the witness came from and how much he was paid.

Mr. HILL. Would it be possible, by looking over the records in your office, from the vouchers, to find out the names of the witnesses appearing before any grand jury where an indictment was procured?

Mr. LEARY. I do not think there is any difference in witnesses appearing before the grand jury and witnesses appearing before a trial court.

Mr. HILL. Does it not set up the name of the case in which they appear in full?

Mr. LEARY. Yes, sir.

Mr. HILL. That is in the voucher?

Mr. LEARY. That is at the head of the voucher.

Mr. HILL. The name of the case?

Mr. LEARY. Yes, sir.

Mr. HILL. Then it would be possible, if I should ask you for a list of the witnesses who appeared before the grand jury at the time Mr. Buchanan was indicted—if I should ask for a list of the witnesses, it would be possible for you to get it?

Mr. LEARY. If it was entitled "Case of the United States v. Frank Buchanan," or "United States v. Monett"—if I had the title of the case I would bring that out. Suppose they did entitle all vouchers "United States v. Buchanan," and those witnesses were paid. I could go for a period covering six months and dig out every voucher; but sometimes the witnesses do not draw their pay. For instance, you might go to New York and come to me and I would say, "Congressman, you go get your voucher," and you would say, "I have not time to get that," and go away. I do not know where the record would be there except in the original subpoena.

Mr. HILL. Most of the witnesses who go before the grand jury take their pay, do they not?

Mr. LEARY. I think the majority of them do; yes, sir.

Mr. HILL. The only record you have is not the return of the subpoena, but whatever might be enumerated or set up in the voucher paid for the fees?

Mr. LEARY. My idea is—I have not seen the return of a subpoena in a long time—but it is just possible they are returned to the clerk's office and I have not seen them.

Mr. HILL. You do not pay fees to anybody who does not testify?

Mr. LEARY. Very often the witnesses are called and do not testify.

Mr. HILL. Do you pay them fees?

Mr. LEARY. Yes, sir; if they are summoned to come on. Very often in these mail-fraud cases, for instance, they have about four or five overt acts in the indictment for similar offenses, and they would not, perhaps, call them, and the judge would order them to be paid.

Mr. HILL. Will you be kind enough to furnish a list of the witnesses subpoenaed in the Buchanan case?

Mr. LEARY. Let me see; that was——

Mr. CARLIN. You would not have authority to furnish that to Mr. Hill. You might furnish that to the committee.

Mr. HILL. Perhaps I should have said furnish it to the committee.

Mr. LEARY. If those vouchers have been returned to the court—let me see: That Congressman was indicted when?

Mr. HILL. December—the last part of December.

Mr. LEARY. If those vouchers have been returned into the court, I can give you that. I can only give you——

Mr. CARLIN. You need not bother about that. We will get a list of the witnesses that appeared and testified in the matter of the indictment of Buchanan and others.

Mr. HILL. I am satisfied we can get them one way or another, but I wanted to find out if the clerk can do that.

Mr. LEARY. I can get them up to December 31.

Mr. HILL. If you can do that, you can get all of them, because the matter was over long before then.

Mr. CARLIN. The subcommittee will stand adjourned until Friday morning at 10.30 o'clock.

(Whereupon, at 5.30 o'clock p. m., an adjournment was taken until Friday, February 11, at 10.30 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, February 11, 1916.

The subcommittee met at 10.45 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson.

Mr. CARLIN. Mr. Clerk, will you call the names of the witnesses summoned for to-day? As the names are called, the witnesses will please come forward and be sworn.

Mr. RUSSELL. Milton Snelling? A. Bruce Bielaski? William F. Kramer? Benjamin Kendal? Miss Catherine Foley?

(Responses were had from Mr. Snelling, Mr. Bielaski, Mr. Kramer, and Miss Foley, and they were thereupon duly sworn by Mr. Carlin.)

Mr. CARLIN. We will examine Miss Foley first. The other witnesses may retire from the room.

TESTIMONY OF MISS CATHERINE C. FOLEY, OF WASHINGTON, D. C.

Mr. CARLIN. What is your full name, Miss Foley?

Miss FOLEY. Catherine C. Foley.

Mr. CARLIN. Where are you employed now?

Miss FOLEY. I am not employed now.

Mr. CARLIN. What was your last employment?

Miss FOLEY. The last employment I had a temporary position yesterday—for one day.

Mr. CARLIN. Are you a stenographer and typewriter?

Miss FOLEY. Yes.

Mr. CARLIN. Were you summoned before the grand jury in New York any time within the past 12 months?

Miss FOLEY. Yes.

Mr. CARLIN. Did you appear before the grand jury?

Miss FOLEY. Yes.

Mr. CARLIN. Did you appear and testify in the matter of the indictment pending against Representative Buchanan, Mr. Schulteis, Mr. Martin, and others?

Miss FOLEY. I did not know anything about the case at all, only I took notes—at least, they wanted information, or thought they could get the information from those notes I took when I was employed by Mr. Martin. I was employed by the American Anti-Trust League, and then Mr. Martin was appointed secretary of Labor's National Peace Council, and whenever he had any dictation or correspondence, I took the dictation.

Mr. CARLIN. You were Mr. Martin's secretary?

Miss FOLEY. Yes.

Mr. CARLIN. At that time you were called to testify?

Miss FOLEY. Yes.

Mr. CARLIN. But you say you knew nothing about it?

Miss FOLEY. No, sir.

Mr. CARLIN. Were questions asked you by the grand jury?

Miss FOLEY. Yes.

Mr. CARLIN. How long were you in the grand jury room?

Miss FOLEY. About 20 minutes.

Mr. CARLIN. Did you have your notes over there with you in the grand jury room?

Miss FOLEY. Yes.

Mr. CARLIN. Did you read them there?

Miss FOLEY. Yes.

Mr. CARLIN. Did you translate your notes before you left?

Miss FOLEY. Yes.

Mr. CARLIN. Do you remember what day you were there?

Miss FOLEY. I was there from about the 27th of November, I think it was, until the 2d or 3d of December.

Mr. CARLIN. You are not employed by Mr. Martin now?

Miss FOLEY. No.

Mr. CARLIN. How many different times were you before the grand jury?

Miss FOLEY. One. That was the only time.

Mr. CARLIN. Before you went before the grand jury, did you have any conversation with the district attorney or any of his assistants?

Miss FOLEY. Yes; with Mr. Sarfaty, the assistant district attorney, in New York.

Mr. CARLIN. You did not see Mr. Marshall?

Miss FOLEY. No; I did not see him at all.

Mr. CARLIN. After this conference with the assistant district attorney, you were sent before the grand jury?

Miss FOLEY. Yes.

Mr. CARLIN. You testified and transcribed your notes and left?

Miss FOLEY. Yes.

Mr. CARLIN. Were you in the employ of Mr. Martin at that time?

Miss FOLEY. No; I had not been for a month.

Mr. CARLIN. How did you happen to have possession of your notes?

Miss FOLEY. Mr. Martin was in New York at the time, and I had the key to the office, and I was subpoenaed to appear in the courts of New York the following morning after I received the subpoena, and I went down with one of the Government officials in the office to get these papers. The subpoena called for papers—that I should present papers and files, and when I went down to the office the files were not there.

Mr. CARLIN. You went down to Mr. Martin's office in Washington?

Miss FOLEY. Yes.

Mr. CARLIN. With a Government official?

Miss FOLEY. Yes.

Mr. CARLIN. And entered the office during his absence?

Miss FOLEY. Yes. I had permission to.

Mr. CARLIN. You had permission from whom?

Miss FOLEY. Mr. Martin. I had the key. I could get in at any time.

Mr. CARLIN. Who was the Government official you went with?

Miss FOLEY. I do not remember his name, but Mr. Bielaski can tell you.

Mr. CARLIN. Did Mr. Martin know you were going to his office to get your notebooks for the purpose of testifying before the New York grand jury?

Miss FOLEY. No; he did not.

Mr. CARLIN. Did you tell him, before you went to New York with this book, of this occurrence between you and the Government official?

Miss FOLEY. Mr. Schulteis knew about it.

Mr. CARLIN. When did you tell Mr. Schulteis about it?

Miss FOLEY. That same day, the same afternoon.

Mr. CARLIN. What did you tell Mr. Schulteis?

Miss FOLEY. I told him I was subpoenaed to New York, and that I was to go there and bring papers, if I could; but I could not get the papers because I did not know where they were.

Mr. CARLIN. What papers were you to get?

Miss FOLEY. I was to get the correspondence papers in the files.

Mr. CARLIN. Correspondence with whom?

Miss FOLEY. With different men.

Mr. CARLIN. What different men?

Miss FOLEY. Mr. Straube was one, and Mr. Kramer.

Mr. CARLIN. Who is Mr. Kramer—a Chicago newspaper man?

Miss FOLEY. He is from Chicago. I do not know what he does.

Mr. CARLIN. Had Mr. Martin been corresponding with him?

Miss FOLEY. Yes.

Mr. CARLIN. Who were the others whose correspondence you were to get?

Miss FOLEY. I do not remember the others.

Mr. CARLIN. After you told this to Mr. Schulteis, what did he say about it?

Miss FOLEY. He said he did not know anything about the files; that probably Mr. Martin had them in his desk or with him in New York. He did not know anything about them at all.

Mr. CARLIN. But you did find your notebook in Mr. Martin's office?

Miss FOLEY. Yes; that was on the desk.

Mr. CARLIN. Did you deliver that notebook to anyone, or did you keep it in your possession?

Miss FOLEY. I kept it in my possession.

Mr. CARLIN. Until you went to New York?

Miss FOLEY. Yes.

Mr. CARLIN. With reference to Mr. Kramer, do you remember distinctly that there was correspondence between him and Mr. Martin?

Miss FOLEY. Yes.

Mr. CARLIN. You do not recall that Mr. Kramer was the reporter for a newspaper, do you?

Miss FOLEY. No.

Mr. CARLIN. Did they want any correspondence between Mr. Martin and Mr. Buchanan?

Miss FOLEY. I do not recollect that.

Mr. CARLIN. You do recall that they asked you for correspondence between Mr. Kramer and Mr. Martin?

Miss FOLEY. Yes.

Mr. CARLIN. Who were the others?

Miss FOLEY. There were several of them, but I can not remember their names. I can only remember Mr. Straube and Mr. Kramer.

Mr. CARLIN. What did you say was the name of the assistant district attorney you talked with in New York?

Miss FOLEY. Mr. Sarfaty.

Mr. CARLIN. How long did you talk with him in his office?

Miss FOLEY. I talked with him about an hour.

Mr. CARLIN. At the conclusion of that conversation, were you sent into the grand jury room?

Miss FOLEY. Yes.

Mr. CARLIN. Was there a stenographer present in the grand jury room while you were testifying?

Miss FOLEY. Yes.

Mr. CARLIN. Was there anybody else present except the stenographer and the grand jurors?

Miss FOLEY. There were two other gentlemen there.

Mr. CARLIN. Do you know who they were?

Miss FOLEY. I do not know who they were; no.

Mr. CARLIN. Two persons who were not members of the grand jury?

Miss FOLEY. Yes.

Mr. CARLIN. How do you know that?

Miss FOLEY. I think they were. They had books; they had large books on the desk. There was Mr. Sarfaty and these two gentlemen and the stenographer and myself at the desk, and the grand jury was seated around.

Mr. CARLIN. Was Mr. Sarfaty in the grand jury room while you were there?

Miss FOLEY. Yes.

Mr. CARLIN. Did he ask you any questions?

Miss FOLEY. Yes; he was the only one who questioned me.

Mr. NELSON. When did you enter Mr. Martin's employ?

Miss FOLEY. About three years ago. I was employed by the American Antitrust League, of which he was secretary.

Mr. NELSON. Were you his assistant as acting for himself or as secretary of the peace council?

Miss FOLEY. I was employed by him as stenographer for the anti-trust league, and I was still employed at the time I received this subpoena, for the American Antitrust League, but whenever he would have any dictation regarding this peace council, I took it.

Mr. NELSON. Are you sure that Mr. Martin was ever secretary of the peace council?

Miss FOLEY. No, I am not sure.

Mr. NELSON. What leads you to believe that he was connected with the peace council at all?

Miss FOLEY. Whenever they had letters we would sign his name. I do not remember if he signed it as secretary.

Mr. NELSON. When was this that you thought he was acting as secretary of the peace council? Can you give the date?

Miss FOLEY. I know I took correspondence in August, 1915.

Mr. NELSON. This was not in June or July, 1915, was it?

Miss FOLEY. I do not remember.

Mr. NELSON. But you are not positive that he was secretary?

Miss FOLEY. No.

Mr. NELSON. What leads you to have that impression?

Miss FOLEY. I thought being as he was writing letters for the peace council, that he was secretary.

Mr. NELSON. Was he writing for the peace council? Are you sure about that?

Miss FOLEY. Oh, yes; he was writing for the peace council.

Mr. NELSON. Did he sign his letters officially in any way?

Miss FOLEY. I think he was the secretary and Mr. Fowler was the counsel.

Mr. NELSON. That is your impression?

Miss FOLEY. Yes.

Mr. NELSON. Have you any letters now in your possession which would indicate that he was?

Miss FOLEY. No.

Mr. NELSON. Would your notes indicate whether he was signing as secretary or not?

Miss FOLEY. Yes.

Mr. NELSON. Where are those notes now?

Miss FOLEY. They are in New York.

Mr. NELSON. What were these notes?

Miss FOLEY. They were letters.

Mr. NELSON. That is, dictation?

Miss FOLEY. Yes.

Mr. NELSON. Stenographic notes of his correspondence dictation?

Miss FOLEY. Yes.

Mr. NELSON. Were you called upon to read all those notes to Mr. Sarfaty?

Miss FOLEY. I transcribed the notes.

Mr. NELSON. And handed him the transcript?

Miss FOLEY. Yes.

Mr. NELSON. Do you remember reading the subpoena that was handed to you?

Miss FOLEY. Yes, I read it.

Mr. NELSON. Did it direct you to come to some room in the courthouse, to some particular room?

Miss FOLEY. No; it just read that I was to appear before the grand jury at 10 o'clock the following morning after I had received it.

Mr. NELSON. How did you happen to go to Mr. Sarfaty's room?

Miss FOLEY. Mr. Bielaski gave me orders to meet one of their agents on the train. I had never been to New York before, and he met me on the train. I took the midnight train that night, and the next morning Mr.—I forget his name now—one of the agents, took me to the Department of Justice there.

Mr. NELSON. That is where you met Mr. Sarfaty?

Miss FOLEY. Yes.

Mr. NELSON. Was Mr. Marshall present when you arrived?

Miss FOLEY. No.

Mr. NELSON. You say there were two men in the room besides the grand jury?

Miss FOLEY. Yes.

Mr. NELSON. And one of them was Mr. Sarfaty?

Miss FOLEY. Yes.

Mr. NELSON. Where did the grand jury sit?

Miss FOLEY. They sat in back of us—I mean in front of us.

Mr. NELSON. They sat together?

Miss FOLEY. Yes.

Mr. NELSON. With reference to the grand jury, where were you sitting?

Miss FOLEY. I was sitting at the desk with Mr. Sarfaty.

Mr. NELSON. At that desk with Mr. Sarfaty and the other two men?

Miss FOLEY. Yes.

Mr. NELSON. What were they doing—just listening, or did they have something to say to Mr. Sarfaty once in a while?

Miss FOLEY. No; they did not say anything.

Mr. NELSON. How near to you were they?

Miss FOLEY. Those two men?

Mr. NELSON. Yes.

Miss FOLEY. They were right around the table, just like this gentleman is [indicating the reporter].

Mr. NELSON. What impression did you get of their purpose in being there?

Miss FOLEY. I thought they thought they could get some information from these notes that I transcribed, but I don't think they did. There was not anything in them to conceal.

Mr. NELSON. Did you have occasion to look over the grand jury?

Miss FOLEY. Yes.

Mr. NELSON. Did you notice whether the foreman was sitting with the grand jury or not?

Miss FOLEY. No.

Mr. NELSON. Might it have been the foreman of the grand jury that sat at the desk, one of these two men to whom you referred?

Miss FOLEY. I do not know.

Mr. NELSON. Why do you think they were not part of the grand jury, but that there were two men extra?

Miss FOLEY. They had books there.

Mr. NELSON. What did they do with these books?

Miss FOLEY. They were just opening them and referring to different things, I thought.

Mr. NELSON. Did Mr. Sarfaty ask them to do anything, to leave the room and get something?

Miss FOLEY. No.

Mr. NELSON. How long were they present?

Miss FOLEY. They were present the whole time I was there.

Mr. NELSON. I have never been in a grand-jury room. Are there seats for the grand jury in such way that they are entirely distinct?

Miss FOLEY. Yes; they are on a stand like, several seats on a stand.

Mr. NELSON. So they were entirely separated from these three men?

Miss FOLEY. Yes.

Mr. NELSON. Did these men take notes or have lead pencils in their hands to take notes of what you were saying?

Miss FOLEY. I did not see anyone take notes, only the stenographer.

Mr. NELSON. Did you see them leave at any time?

Miss FOLEY. No.

- Mr. NELSON. They were there when you left?
- Miss FOLEY. They were present the whole time.
- Mr. NELSON. And when you left they remained there?
- Miss FOLEY. Yes.
- Mr. NELSON. Did Mr. Sarfaty go out with you?
- Miss FOLEY. No.
- Mr. NELSON. Can you describe these two men or either of them?
- Miss FOLEY. No.
- Mr. NELSON. Were they young men?
- Miss FOLEY. I do not remember what they really did look like. I did not take special notice. I just noticed them sitting alongside of me with large books. I didn't take any particular notice.
- Mr. NELSON. You had not seen them before?
- Miss FOLEY. No.
- Mr. CARLIN. How many men were there on the grand jury?
- Miss FOLEY. I suppose there were about 20.
- Mr. CARLIN. Did you count them?
- Miss FOLEY. I did not count them; no.
- Mr. CARLIN. You did not count the number of men in the room altogether?
- Miss FOLEY. No.
- Mr. GARD. Miss Foley, was there any agent or inspector from the Department of Justice that saw you before you got your subpœna?
- Miss FOLEY. At home here, you mean?
- Mr. GARD. Yes.
- Miss FOLEY. No.
- Mr. GARD. Did you see Mr. Bielaskie at any time before you got your subpœna?
- Miss FOLEY. No; not before.
- Mr. GARD. How soon after that did you see him?
- Miss FOLEY. About an hour.
- Mr. GARD. Where?
- Miss FOLEY. In the Department of Justice.
- Mr. GARD. As soon as they subpœnaed you, did they take you to the Department of Justice in Washington?
- Miss FOLEY. No. As soon as I got the subpœna, I read it, and then I went down to the office.
- Mr. GARD. Down to what office?
- Miss FOLEY. Mr. Martin's office.
- Mr. GARD. Whom did you meet there?
- Miss FOLEY. There was no one there at that time.
- Mr. GARD. How soon did you meet Mr. Bielaski or any other agent of the Government?
- Miss FOLEY. About half an hour after that.
- Mr. GARD. While you were in the office?
- Miss FOLEY. About half an hour after we left the office.
- Mr. GARD. You say "we left the office." Whom do you mean when you say "we"?
- Miss FOLEY. One of these Government officials.
- Mr. GARD. Who was the Government official?
- Miss FOLEY. I do not know his name.
- Mr. GARD. Where did you meet him first?
- Miss FOLEY. He brought the subpœna to the house.

Mr. GARD. Then did he go with you down to the office?

Miss FOLEY. Yes.

Mr. GARD. What did they say to you about what they wanted you to do?

Miss FOLEY. They wanted me to get copies of letters to these different men in the files in the office.

Mr. GARD. In Mr. Martin's files?

Miss FOLEY. In his office; yes.

Mr. GARD. You went down there with the agent?

Miss FOLEY. Yes; and the door was locked.

Mr. GARD. You had the key?

Miss FOLEY. Yes.

Mr. GARD. Did you open the door?

Miss FOLEY. No; I did not open the door. I did not have the key with me then.

Mr. GARD. How did you get in?

Miss FOLEY. This Government official got in; he got the elevator boy to open the door.

Mr. GARD. The elevator boy let him in?

Miss FOLEY. Yes.

Mr. GARD. The next day did you go to New York?

Miss FOLEY. Yes.

Mr. GARD. Did you go by yourself or with this Government official?

Miss FOLEY. I went alone, but I met one of the officials on the train up in New York.

Mr. GARD. Where did you meet him on the train?

Miss FOLEY. In New York.

Mr. GARD. In New York or before you got to New York?

Miss FOLEY. When I got there.

Mr. GARD. Do you remember what time you got there?

Miss FOLEY. I think the train arrived about 7.20 or something like that.

Mr. GARD. Did he take you to the Department of Justice?

Miss FOLEY. Yes.

Mr. GARD. Immediately, or did you go to the hotel first?

Miss FOLEY. No; we did not go to the hotel. He showed me around the place first.

Mr. GARD. Do you know who that was that met you there?

Miss FOLEY. His name was Crappey—they called him Crappey; I do not know his full name.

Mr. GARD. What time did you get to the office of the district attorney?

Miss FOLEY. We got there about 10 o'clock.

Mr. GARD. The first one you saw was Mr. Saefaty?

Miss FOLEY. Yes.

Mr. GARD. Did you see Mr. Marshall, the district attorney, at all?

Miss FOLEY. No.

Mr. GARD. Do you know him?

Miss FOLEY. No.

Mr. GARD. You never saw him?

Miss FOLEY. No.

Mr. GARD. You were questioned by Mr. Sarfaty in his office and before the grand jury?

Miss FOLEY. Yes.

Mr. GARD. Did Mr. Sarfaty, when he was talking to you in his office, say anything by which he endeavored to induce you to testify to anything not true?

Miss FOLEY. No.

Mr. GARD. Did he attempt to put you in fear in any way?

Miss FOLEY. He asked me several questions. He cross-examined me.

Mr. GARD. Did he offer to say that he would imprison you or anything like that?

Miss FOLEY. Oh, no.

Mr. GARD. Did he treat you kindly?

Miss FOLEY. Yes, sir.

Mr. GARD. Then you went before the grand jury?

Miss FOLEY. Yes.

Mr. GARD. Do you remember the day you were before the grand jury?

Miss FOLEY. I think it was about the 30th of November—the 30th or 31st of November—no; the 30th of November, I think.

Mr. GARD. You were there until the 2d of December?

Miss FOLEY. Yes.

Mr. GARD. Then you returned to Washington?

Miss FOLEY. Yes.

Mr. GARD. Whatever your testimony was—we are not asking what it was—you were questioned by Mr. Sarfaty and your testimony was taken in the grand-jury room by the grand jurors?

Miss FOLEY. Yes.

Mr. CARLIN. You had in your notebook all the correspondence that Mr. Martin had had with reference to this peace council?

Miss FOLEY. Not all of it. I had there the latter part of August, I think, because I had destroyed my other notebooks. I always destroyed them when I got a new one.

Mr. CARLIN. You say Mr. Martin in his correspondence represented himself as the secretary of the organization?

Miss FOLEY. I am not positive of that, but I think so.

Mr. CARLIN. That is your impression?

Miss FOLEY. Yes.

Mr. CARLIN. You think your notebooks will show whether that is correct or not?

Miss FOLEY. Yes.

Mr. CARLIN. Did either of these two men whom you have described as having books ask any questions of you?

Miss FOLEY. No.

Mr. CARLIN. Did any members of the grand jury ask you questions?

Miss FOLEY. I do not think so; no. I am not positive about that.

Mr. CARLIN. Could you tell from your observation and experience which was the foreman of the grand jury?

Miss FOLEY. No.

Mr. CARLIN. You therefore did not know whether these two men were members of the grand jury whom you have described as having books?

Miss FOLEY. No.

Mr. CARLIN. Was the stenographer a male or female stenographer?

Miss FOLEY. Male.

Mr. GARD. You were never employed by Mr. Samuel Gompers, were you?

Miss FOLEY. No.

Mr. GARD. Or Mr. Frank Morrison?

Miss FOLEY. No, sir.

Mr. GARD. Were you employed by Mr. Schulteis at any time?

Miss FOLEY. No; I was employed by Mr. Martin.

Mr. GARD. You never were employed by Mr. Buchanan?

Miss FOLEY. No.

Mr. GARD. Just by Mr. Martin?

Miss FOLEY. Yes.

Mr. GARD. Are you still in the employ of the Anti-Trust League?

Miss FOLEY. No; I am not now.

Mr. CARLIN. Did you resign?

Miss FOLEY. Yes.

Mr. CARLIN. You were not dismissed?

Miss FOLEY. No.

Mr. CARLIN. When did you resign?

Miss FOLEY. After this case, after this trouble they had.

Mr. CARLIN. What trouble do you mean?

Miss FOLEY. I mean after I come back from New York, I did.

Mr. CARLIN. Why did you resign after you came back from New York?

Miss FOLEY. My father thought I was getting too much notoriety and did not want me to go back there any more.

Mr. CARLIN. Had your name been published in the newspapers in connection with this case?

Miss FOLEY. Yes.

Mr. CARLIN. In New York?

Miss FOLEY. It had been in several papers in New York, but only one here; in the Times, I think it was.

Mr. CARLIN. Then at the time you went to Mr. Martin's office and got your notebook, you were still on his pay roll as secretary of the antitrust league?

Miss FOLEY. Yes—no, not secretary, but stenographer.

Mr. CARLIN. You were stenographer to the secretary?

Miss FOLEY. Yes.

Mr. CARLIN. You were an employee of the office?

Miss FOLEY. Yes.

Mr. CARLIN. And you had a right to go in the office?

Miss FOLEY. Yes.

Mr. CARLIN. You were not paid separately for your stenographic work for the peace council, were you?

Miss FOLEY. No.

Mr. NELSON. Did Mr. Martin in his correspondence use a letterhead with the name of the peace council on it?

Miss FOLEY. Yes.

Mr. NELSON. This did not occur in July, you say, but you think it covered the most of August and about that time of year?

Miss FOLEY. Yes.

Mr. NELSON. Did you ever write a letter to Mr. Buchanan for Mr. Martin where he signed himself as secretary of the peace council?

Miss FOLEY. Yes; I am not sure if he signed his name as secretary, but I can find out.

Mr. CARLIN. You said you could find out?

Miss FOLEY. Yes.

Mr. CARLIN. How?

Miss FOLEY. If I had my notes.

Mr. CARLIN. But you have not got your notes?

Miss FOLEY. I suppose I could get them; at least Mr. Bielaski could get them.

Mr. NELSON. It is just an impression you have that he signed himself as secretary of the peace council, and you are not positive?

Miss FOLEY. No.

Mr. NELSON. But he did use letterheads or stationery with the name "Peace Council" on it?

Miss FOLEY. Yes.

Mr. CARLIN. Where did he get the stationery for the peace council?

Miss FOLEY. I do not know.

Mr. CARLIN. Did the peace council ever meet in Mr. Martin's office while you were there?

Miss FOLEY. Not as I can recollect.

Mr. CARLIN. Do you know whether it was part of Mr. Martin's duty to solicit contributions to the peace council?

Miss FOLEY. No.

Mr. CARLIN. You mean you do not know.

Miss FOLEY. No, I do not know.

Mr. CARLIN. Miss Foley, did Mr. Sarfaty make any statement to the grand jury with reference to your evidence or any argument of any sort relating to your evidence before the grand jury?

Miss FOLEY. No.

Mr. CARLIN. He confined himself simply to asking questions?

Miss FOLEY. Yes.

Mr. CARLIN. And those questions were with reference to your stenographic notes?

Miss FOLEY. Yes.

Mr. CARLIN. And the translation from them?

Miss FOLEY. Yes.

Mr. CARLIN. Did you translate your stenographic notes into type-written matter?

Miss FOLEY. Yes.

Mr. CARLIN. You had to stay there some time to do that, did you?

Miss FOLEY. Yes.

The CHAIRMAN (Mr. WEBB). Was it possible that one of these men sitting at the desk could have been a clerk who issued service checks to you?

Miss FOLEY. I did not take any particular notice at all. I just answered the questions. I did not take any notice at all, only of course I saw these grand-jury men in front of me.

The CHAIRMAN. Who issued your attendance certificate?

Miss FOLEY. This agent of the Department of Justice brought me over there to the grand-jury room. He brought me over there and brought me back.

The CHAIRMAN. Was either one of these gentlemen that you speak of sitting at the table where you were, taking notes or writing anything in a book?

Miss FOLEY. I do not remember that at all. I just happened to gaze on the desk and I saw those large books.

The CHAIRMAN. Were they printed or blank books?

Miss FOLEY. I did not notice what was in them at all. I know they were large.

The CHAIRMAN. Were they law books, like these books around here [indicating]?

Miss FOLEY. They were larger than those. They were large books.

The CHAIRMAN. Like some sort of bookkeeping books?

Miss FOLEY. Yes.

The CHAIRMAN. You do not know, then, but what that man might have been the clerk keeping the minutes?

Miss FOLEY. Probably; yes.

Mr. CARLIN. Miss Foley, has anybody interrogated you since you left the grand-jury room, as to your testimony before the grand jury?

Miss FOLEY. Mr. Martin asked me about things that they questioned me there in the grand jury room about.

Mr. CARLIN. You told him, I suppose?

Miss FOLEY. Yes.

Mr. CARLIN. We will excuse you now, Miss Foley. If we want you again we will let you know.

(Witness excused.)

TESTIMONY OF MR. WILLIAM F. KRAMER, OF CHICAGO, ILL.

Mr. CARLIN. Please give your full name, occupation, and address.

Mr. KRAMER. William F. Kramer. I am general secretary-treasurer of the International Brotherhood of Blacksmiths and Helpers. My address is 1270-1285 Monon Building, Chicago. That is the position I fill now. My trade is blacksmith.

Mr. CARLIN. What is your home address?

Mr. KRAMER. My home address is 18 North Kedsie Avenue, Chicago.

Mr. CARLIN. Were you a member of the peace council?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. Were you an officer?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. What position did you hold?

Mr. KRAMER. Second vice president.

Mr. CARLIN. Are you now a member?

Mr. KRAMER. No.

Mr. CARLIN. Are you now an officer?

Mr. KRAMER. No, sir.

Mr. CARLIN. When did you resign?

Mr. KRAMER. Some time the latter part of July—August, I guess it was.

Mr. CARLIN. You are not under indictment?

Mr. KRAMER. Not that I know of.

Mr. CARLIN. Were you a witness before the grand jury in New York City?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. When were you there?

Mr. KRAMER. I think it was on December 2.

Mr. CARLIN. You mean 1915?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. Did you testify before the grand jury?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. Who was present in the grand-jury room, except the grand jurors, when you testified?

Mr. KRAMER. I do not know anyone only one man, by name, and that was Mr. Sarfaty. As I understood, he was assistant district attorney.

Mr. CARLIN. Was a stenographer there?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. So far as you know, were they the only two persons except the grand jury that were present?

Mr. KRAMER. There were four persons, as nearly as I can judge, sitting at the table in addition to the jurors. Mr. Sarfaty was the only one that I knew.

Mr. CARLIN. Do you know whether the other three were members of the jury or not?

Mr. KRAMER. I understood one was foreman, or the chairman, of the grand jury as they called him, and a gentleman sitting there taking notes.

Mr. CARLIN. Then the foreman of the grand jury, as you understood it, sat at a different part of the room from the jurors?

Mr. KRAMER. Yes; as I understand it he sat at the same table I did. Opposite from me was Mr. Sarfaty.

Mr. CARLIN. Before you testified before the grand jury, were you interviewed in the office of the district attorney?

Mr. KRAMER. No, sir. I met Mr. Sarfaty. I was not very well acquainted with where the court rooms were and I was advised to call on Mr. Sarfaty. I called at his office.

Mr. CARLIN. Who advised you to call on him?

Mr. KRAMER. I think I was advised, when I was subpoenaed to go and see Mr. Sarfaty. I went to his offices and he told me that the hearing would be held at half past 1 o'clock, and I returned and met Mr. Sarfaty—no, I went right direct to the jury room after luncheon.

Mr. CARLIN. You were not examined in the district attorney's office, either by the district attorney or any of his assistants?

Mr. KRAMER. No, sir.

Mr. CARLIN. Were you a volunteer witness?

Mr. KRAMER. No, sir; I was subpoenaed.

Mr. CARLIN. Do you know how you came to be subpoenaed?

Mr. KRAMER. No, sir; I do not. I was served with the subpoena by Mr. Streator, I think, in Chicago.

Mr. CARLIN. Who is Mr. Streator?

Mr. KRAMER. He is one of the United States deputy marshals.

Mr. CARLIN. That grand jury you will recall, of course, returned indictments against several officers of the peace council?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. How do you understand it happened an indictment was not returned against you as an officer of the peace council?

Mr. KRAMER. I do not know.

Mr. CARLIN. Do you know Mr. Kendall, of Chicago?

Mr. KRAMER. Only by sight. He came to see me once. I think he is a reporter on the Chicago Tribune.

Mr. CARLIN. There were several interviews in the Chicago Tribune purporting to come from you relating to Representative Buchanan's connection with the peace council. Do you recall those articles?

Mr. KRAMER. I recall seeing those articles; yes, sir.

Mr. CARLIN. Did you give out those interviews?

Mr. KRAMER. No, sir; not the way it was published.

Mr. CARLIN. Did you give out any interview at all?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. To whom did you give the interview?

Mr. KRAMER. To Mr. Kendall.

Mr. CARLIN. What was the difference between the way you gave it out and the way it was published?

Mr. KRAMER. The write-up as it appeared in the Tribune said that I hoped the guilty persons would be prosecuted—something along those lines, as nearly as I can remember. What I said to Mr. Kendall was that I was sorry to note that Mr. Buchanan had been indicted with these other men, because I thought he was able to prove his innocence, and that these men who had directly or indirectly affiliated themselves with the Labor's National Peace Council without the knowledge of the officers—that I hoped they would be convicted and severely dealt with.

Mr. CARLIN. Did not that article state that you said that "gang went about the work and got away with it by pretending to be agents of the labor peace council"?

Mr. KRAMER. I do not remember any such statement at all.

Mr. CARLIN. Did you say that they sent "telegrams signed 'K' which asked for money. I was amazed at their cunning in seeking to mulch each other by using initials which would give the impression that I and my associates were lending our efforts to further their schemes"?

Mr. KRAMER. Yes. That was brought out, you understand, by the evidence. It was told to me in Mr. Offley's office in New York that they had telegrams, and showed me copies of telegrams signed "K."

Mr. CARLIN. Telegrams from where?

Mr. KRAMER. Coming from Watertown and one or two other places in New York State.

Mr. CARLIN. Addressed to whom?

Mr. KRAMER. I do not know who they were addressed to, but they were signed "K," and they tried to make it appear that I had signed the telegrams, on account of my name starting with K.

Mr. CARLIN. Who is Mr. Offley?

Mr. KRAMER. He is chief inspector, I was told. I never met him before until I got there?

Mr. CARLIN. Do you remember the dates of the telegrams?

Mr. KRAMER. One of them, I think, was dated in August. As near as I can tell, they were in August. He just showed me the initials on those copies.

Mr. CARLIN. How could you have had reference to these telegrams in August when this interview was in June?

Mr. KRAMER. I gave no interview in June.

Mr. CARLIN. I see it was on December 29. Will you look at this Chicago Daily Tribune and the article in question and tell us how

much of that interview you did give to Mr. Kendall—or rather tell us how much you did not give, which will perhaps be easier to do?

Mr. KRAMER. The portion that reads that "they sent telegrams signed 'K,' which asked for money." I stated there I was amazed at their cunning in seeking to mulct each other by using initials which would give the impression that I and my associates were lending our efforts to further their schemes.

Mr. CARLIN. You did not say that?

Mr. KRAMER. I did say that, and I got that information; the reason I said that was on account of them showing me these telegrams in New York.

Mr. CARLIN. How much of that article attributed to you did you not give to the reporters?

Mr. KRAMER. That is the only part that I gave, and then in addition to that where it states here about Mr. Buchanan being the first to promote the Labor's Peace Council; I gave that. I said other matters which they did not print. I stated that the other indicted men—I said I was positive Mr. Buchanan could prove his innocence in the matter, and those other men who had affiliated themselves with Labor's National Peace Council I hoped would be found guilty and severely dealt with.

Mr. CARLIN. What other men did you mean?

Mr. KRAMER. I meant Mr. Martin and Mr. Lamar and those that were indicted.

Mr. CARLIN. Other than Mr. Buchanan?

Mr. KRAMER. Other than Mr. Buchanan; yes.

Mr. CARLIN. You did not mean Mr. Taylor, did you?

Mr. KRAMER. No, sir; I did not.

Mr. CARLIN. But you meant all the others except Mr. Taylor and Mr. Buchanan?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. Do you know Mr. Monnett?

Mr. KRAMER. Yes; I met him once or twice.

Mr. CARLIN. Did you mean him when you said you hoped they would be convicted?

Mr. KRAMER. I meant all the men, but I said positively about Mr. Buchanan and specifically said I was sure Mr. Buchanan could prove his innocence.

Mr. NELSON. That was on the assumption that what you were told was true? You did not know anything about what the others had or had not done?

Mr. KRAMER. I assumed that from my connection with Mr. Buchanan.

Mr. CARLIN. While on this line I want to ask you if you were offered or promised any immunity from indictment as an officer of the peace council before you testified before the grand jury or after you testified?

Mr. KRAMER. No, sir; absolutely not.

Mr. CARLIN. I gather from what you said that you are entirely familiar with Mr. Buchanan's relations to the peace council?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. Are you likewise familiar with the relations of the other parties whom you have named?

Mr. KRAMER. Up to the time that the peace council practically disbanded—our Chicago office.

Mr. CARLIN. When was that?

Mr. KRAMER. When they did away with the office was after I had testified at New York.

Mr. CARLIN. Who did away with the office?

Mr. KRAMER. Mr. Straube and myself. We were unable to keep up the expenses of the office, and we simply had to close it down.

Mr. CARLIN. Was it then you resigned?

Mr. KRAMER. No; I had not had any connection with the peace council, only in the way of advisory capacity with Mr. Straube, who was the secretary. I had not had anything to do with the actual workings of it when they held their second convention here in Washington, I think, on July 30, or somewhere around that date.

Mr. CARLIN. Why did you resign?

Mr. KRAMER. I simply did not have the time to give my attention to it, and I did not like the methods they were using in calling conventions promiscuously and dragging every other organization into it.

Mr. CARLIN. Who was doing it?

Mr. KRAMER. The officers of the peace council.

Mr. CARLIN. Mr. Martin was not an officer of the peace council, was he?

Mr. KRAMER. No, sir.

Mr. CARLIN. Was Mr. Schulteis an officer of the peace council?

Mr. KRAMER. No, sir.

Mr. CARLIN. Or Mr. Monet?

Mr. KRAMER. No, sir; that is, up until that time.

Mr. CARLIN. Does your remark include Mr. Buchanan—that you meant you did not like his methods?

Mr. KRAMER. Mr. Buchanan was not connected with Labor's National Peace Council later than about the 25th or 28th of July.

Mr. CARLIN. That is just what I am trying to establish. At the time you became dissatisfied with the organization, Mr. Buchanan was not connected with it?

Mr. KRAMER. No, sir.

Mr. CARLIN. Who was its president then?

Mr. KRAMER. At the second convention that was held here in Washington, they elected a man by the name of Taylor, from East Orange, N. J.

Mr. CARLIN. Mr. Taylor had been the secretary before, had he not?

Mr. KRAMER. No; he was one of the vice presidents, I believe.

Mr. CARLIN. Mr. Kramer, going back to the conversation with Mr. Kendall after this article was published in the Tribune, did you have any talk with Mr. Kendall over the telephone or otherwise about the truth of the publication?

Mr. KRAMER. About this publication here?

Mr. CARLIN. Yes.

Mr. KRAMER. Yes. He called up, and I simply called him to task about the write-up. I told him they were not acting fair. He wanted to know if I hadn't anything else to give out, but I told him I was through giving any interviews because they were not inclined to tell the truth.

Mr. CARLIN. What did he say to that?

Mr. KRAMER. He said he was not at fault for that.

Mr. CARLIN. Did he say who was at fault?

Mr. KRAMER. No; he did not.

Mr. CARLIN. Did he intimate to you that this article was in any way dictated from New York?

Mr. KRAMER. No, sir.

Mr. CARLIN. Did he insinuate that Mr. Marshall's office had anything to do with this publication?

Mr. KRAMER. No, sir.

Mr. CARLIN. Did you gather the impression from what was said to him that Mr. Marshall's office did have anything to do with this publication?

Mr. KRAMER. No, sir.

Mr. CARLIN. Did Mr. Kendall admit to you that the article was not true?

Mr. KRAMER. No; he admitted that it had been changed.

Mr. CARLIN. Since he wrote the article?

Mr. KRAMER. Yes.

Mr. CARLIN. Did he say by whom?

Mr. KRAMER. No.

Mr. CARLIN. As vice president of the peace council, did you receive a salary?

Mr. KRAMER. No, sir.

Mr. CARLIN. What connection did Martin and Schulteis and Lamar have with the peace council?

Mr. KRAMER. I do not know Mr. Lamar. I never knew he was connected with it at all. Mr. Schulteis had not any connection with the peace council. Mr. Martin—I am not sure whether he was on the executive board or not, but I do remember this, that their names both Mr. Martin's and Mr. Schulteis's names were suggested at the first convention that was held in Washington on June 22, one as the associate counsel—Mr. Schulteis to be associate counsel to Mr. Fowler, and Mr. Buchanan strenuously objected to Mr. Martin and Mr. Schulteis being connected as an officer with the Labor's National Peace Council, going on record as saying it was to be composed only of men affiliated with organized labor.

Mr. CARLIN. Did the position of counsel carry with it any emoluments?

Mr. KRAMER. I did not hear of any.

Mr. CARLIN. Was counsel expected to serve without compensation?

Mr. KRAMER. I do not know how he was going to be compensated, or anything. I never heard any discussion over it. I never heard anything specified.

Mr. CARLIN. Who was financing the Peace Council?

Mr. KRAMER. Up until shortly after the first convention, any expense that was incurred after the first convention Mr. Buchanan paid out of his own pocket at the headquarters that he had established in the Briggs House. He had rooms there and opened up an office and put a secretary in there to take care of the office work and get out literature. Then he also sent out a few organizers to visit the different central bodies throughout the country for the purpose of organizing local Peace Councils.

Mr. CARLIN. My question was, who was financing this institution?

Mr. KRAMER. I do not know, Mr. Carlin.

Mr. CARLIN. Do you know where the money came from to pay for stationery and office rent?

Mr. KRAMER. I know that Mr. Buchanan paid for the office and a great deal of the printed matter there, literature that we got out.

Mr. CARLIN. When you came to Washington to attend the council, you had to pay your own expenses?

Mr. KRAMER. I only came to one convention, and that was on June 22.

Mr. CARLIN. Did you have to pay your own expenses?

Mr. KRAMER. No; I was reimbursed for my expenses by Mr. Fowler.

Mr. CARLIN. Mr. Fowler was the general counsel?

Mr. KRAMER. Yes, sir. He was not general counsel at that time. He was only selected as general counsel at the first convention, you understand.

Mr. CARLIN. What was he at that time? What was he at the time he paid your expenses to Washington?

Mr. KRAMER. He was not any officer at all.

Mr. CARLIN. How did it happen that he should pay your expenses?

Mr. KRAMER. He insisted on my going down there as a representative or international officer of the labor organization, and he wanted me to go down there and take part in the discussion, and he said, "I will reimburse you for the expenses you are put to." I could not afford to pay my own.

Mr. CARLIN. Mr. Kramer, do you know who paid the expenses of the other gentlemen who attended the convention, or whether they were paid or not?

Mr. KRAMER. I do not know. I do not know whether they have been paid or not.

Mr. CARLIN. As an officer of the association, was a statement ever rendered to you as to the financial condition of the association?

Mr. KRAMER. No, sir.

Mr. CARLIN. Did you ever inquire about the finances of the association or the organization?

Mr. KRAMER. I inquired once of Mr. Straube in September, I think it was. He had opened these headquarters. I will first have to tell you that we did away with those headquarters in the Briggs House a few days after they returned from the second convention, which was held July 20. I am not so positive whether it was July 30 or July 31, but it was around that time.

Mr. CARLIN. Did you know at that time that the New York grand jury was investigating the Peace Council?

Mr. KRAMER. No, sir.

Mr. CARLIN. When did you first learn that?

Mr. KRAMER. When I was subpoenaed.

Mr. CARLIN. What date was that?

Mr. KRAMER. I think it was December 2. I had come back from the coast. I got back into Chicago on Thanksgiving Day.

Mr. CARLIN. At the time Mr. Buchanan had resigned and at the time you resigned, you had no information that there was any grand jury proceedings pending in New York?

Mr. KRAMER. No, sir; none whatever.

Mr. CARLIN. Have you ever learned since just why Mr. Fowler should have paid your expenses?

Mr. KRAMER. No, sir.

Mr. CARLIN. You never took the trouble to inquire?

Mr. KRAMER. No, sir.

Mr. CARLIN. Do you know whether Mr. Fowler was reimbursed?

Mr. KRAMER. No, sir; I do not.

Mr. CARLIN. Do you know what other witnesses testified before the grand jury in New York?

Mr. KRAMER. No, sir; I know of two or three that were called there after I had been there, but whether they testified before the grand jury or not I do not know.

Mr. CARLIN. What three were those?

Mr. KRAMER. It was Mr. L. P. Straube and Mr. I. J. Cundiff and Mr. C. H. Canode.

Mr. GARD. Can you give us the addresses of these men?

Mr. KRAMER. I do not know the addresses of all of them. I can give Mr. Canode's address.

Mr. CARLIN. Did you see Mr. Marshall when you were in New York?

Mr. KRAMER. No, sir; not that I know of. He was not pointed out to me, and I was not introduced to him, and, therefore, I would not know him.

Mr. CARLIN. Before you went to testify before the grand jury, were you interviewed by any agent or officer of the Federal Government?

Mr. KRAMER. No, sir; I was told by Mr. Sarfaty, the assistant, that the hearing would take place at half-past one, and it was then the noon hour, and I went out to get lunch and walked around a little bit until the time to come up to Mr. Sarfaty's office, and then went direct to the grand-jury room.

Mr. CARLIN. Did any officer of the Government interview you in Chicago before you went to New York?

Mr. KRAMER. No, sir.

Mr. CARLIN. No one ever talked to you—

Mr. KRAMER (interrupting). The only person in the way of a Government representative that came to see me was the day I was subpoenaed, and I am pretty positive his name was Streater. He came and read the subpoena to me, and asked if I could accept it, and I said yes, and he gave me very little time to go to New York.

Mr. CARLIN. Have you any idea that your testimony before the grand jury was helpful in the procuring of an indictment?

Mr. KRAMER. No, sir; I do not know anything about it.

Mr. CARLIN. You do not know whether it was or not?

Mr. KRAMER. No, sir.

Mr. GARD. May I ask what position you occupied in the labor council?

Mr. KRAMER. General secretary-treasurer of the International Brotherhood of Blacksmiths and Helpers.

Mr. GARD. Do I understand you that upon the organization of this Labor's National Peace Council you became affiliated with it at once, as soon as it was organized?

Mr. KRAMER. I did not resign the position as secretary of the blacksmiths, you understand.

Mr. GARD. Did you resign that position ever?

Mr. KRAMER. As secretary of the blacksmiths?

Mr. GARD. Yes.

Mr. KRAMER. No, sir.

Mr. GARD. Do you still occupy that position?

Mr. KRAMER. Yes, sir.

Mr. GARD. Later you did become an officer of Labor's National Peace Council?

Mr. KRAMER. Yes, sir.

Mr. GARD. I understand you resigned that in July, 1915?

Mr. KRAMER. It was in August, I think, 1915.

Mr. GARD. Recurring just a moment to the time when you appeared as a witness in New York, when you went to New York City you were told by some one to go to the office of the district attorney?

Mr. KRAMER. Yes, sir.

Mr. GARD. You did go there and there you saw this Mr. Sarfaty?

Mr. KRAMER. Yes, sir.

Mr. GARD. At that time when you had this talk with Mr. Sarfaty in his office did he make any promise of immunity to you?

Mr. KRAMER. No, sir; I asked this—I said “What am I subpoenaed for?” I was in total ignorance of what I was being taken to New York for. He said, “We will talk about that after a while.” and he gave me no information. From there I simply went, as I said before, to get my luncheon and come back to the jury room.

Mr. GARD. Did he say anything in any attempt to influence what your testimony might be before the grand jury?

Mr. KRAMER. No, sir.

Mr. GARD. Did he make any threats against you or statement that you would be imprisoned unless you did testify?

Mr. KRAMER. No, sir.

Mr. GARD. Nothing of that kind?

Mr. KRAMER. No, sir.

Mr. GARD. He just said what he did say about talking later with you about it, and the only time later was when you were before the grand jury?

Mr. KRAMER. Yes, sir.

Mr. GARD. After your testimony before the grand jury on the date you have mentioned, did you appear again?

Mr. KRAMER. No, sir. He took me over out of the building across the street into an office where the chief inspectors are stationed.

Mr. GARD. Do you mean Mr. Sarfaty took you?

Mr. KRAMER. Yes; he took me over there to a man by the name of Offley, whom he represented to me as being the chief. He began asking me some questions. That was after I was through with the grand jury.

Mr. GARD. Offley asked you a question?

Mr. KRAMER. Yes.

Mr. GARD. The chief inspector?

Mr. KRAMER. Yes, sir. That is when he showed me these telegrams, or copies rather. They were photographs of these telegrams and other communications.

Mr. GARD. I was trying to get at your treatment by the district attorney's office. There was nothing improper in your treatment by the district attorney's office, was there?

Mr. KRAMER. No, sir.

Mr. GARD. I understand you do not know Mr. Marshall and never met him at all?

Mr. KRAMER. No, sir.

Mr. GARD. H. Snowden Marshall?

Mr. KRAMER. He might have been there at the table in the jury room; I do not know.

Mr. GARD. He was not made known to you?

Mr. KRAMER. No, sir; he was not made known to me.

Mr. CARLIN. You had considerable correspondence with Mr. Martin, had you not?

Mr. KRAMER. I did not have a great deal. Mr. Straube took care of the biggest part of the correspondence. There were several letters I wrote to him. Mr. Martin had agreed to take care of the expense of the new offices that were opened in the Monon Building.

Mr. CARLIN. Where is that?

Mr. KRAMER. In Chicago, on Dearborn Street.

Mr. CARLIN. With whom had Mr. Martin agreed to do that?

Mr. KRAMER. With Mr. Straube. He was going to take care of his salary, and that of the stenographer, and the rent of the offices. Shortly after the second convention he began to fall off with the funds, and Mr. Straube and the office rent were going by default, and on several occasions Mr. Straube asked me to write to Mr. Martin and find out what he was going to do about it. The finances began to fall off continuously until finally they stopped altogether. As a result of that, Mr. Straube and myself have had to foot the bills.

Mr. CARLIN. Why do you suppose Mr. Martin should pay it or agree to pay it?

Mr. KRAMER. It was his own proposition, so as to be able to continue the Chicago headquarters.

Mr. CARLIN. He was not an officer of the association?

Mr. KRAMER. No, sir.

Mr. CARLIN. Why should he pay the bills?

Mr. KRAMER. I do not know, but that was the offer he made.

Mr. CARLIN. Was the question of strikes ever discussed while you were an officer of the peace council?

Mr. KRAMER. I never heard a word..

Mr. CARLIN. Was the question of interstate commerce in any way discussed while you were an officer of the peace council?

Mr. KRAMER. No, sir.

Mr. CARLIN. Did any Federal officer ever discuss these questions with you at all?

Mr. KRAMER. No, sir.

Mr. CARLIN. Did Mr. Martin ever discuss them with you?

Mr. KRAMER. Since I was in New York?

Mr. CARLIN. Either before or since.

Mr. KRAMER. In reference to strikes?

Mr. CARLIN. Yes.

Mr. KRAMER. No, sir; I never heard it discussed in any meeting that I ever attended, nor was it ever discussed in the offices.

Mr. CARLIN. Have you seen Mr. Martin since you have testified in New York?

Mr. KRAMER. No, sir.

Mr. CARLIN. Have you corresponded with him?

Mr. KRAMER. No, sir.

Mr. CARLIN. Have you seen him since he refused to pay the expenses which you say he agreed to pay?

Mr. KRAMER. No, sir; I have not seen him.

Mr. CARLIN. Did you ask him why he refused?

Mr. KRAMER. I never asked him. I simply told him that he was not making good on his promises and that he was making Mr. Straube and myself liable for the expenses we were incurring in the Chicago office.

Mr. CARLIN. You told him that by correspondence?

Mr. KRAMER. Yes.

Mr. CARLIN. What reason did he give for declining to pay?

Mr. KRAMER. He never answered me. He possibly answered Mr. Straube, but he never answered me.

Mr. CARLIN. Why did you suppose he should be willing to pay in the beginning, Mr. Kramer?

Mr. KRAMER. Nothing only what he had to say for himself, that he was interested in bringing about the keeping of our country out of war, and to try to bring peace about.

Mr. CARLIN. You regarded him as a philanthropist?

Mr. KRAMER. No.

Mr. CARLIN. Had you ever had any acquaintance with him before the peace council was organized?

Mr. KRAMER. No, sir. The first time I met him was sometime during the month of May, I think it was. That was the first time I met the gentleman.

Mr. CARLIN. What is your idea as to what was his real interest in furnishing those funds, based upon that connection with the peace council and your experience since?

Mr. KRAMER. My opinion of it?

Mr. CARLIN. Yes.

Mr. KRAMER. Really I have not formed any opinion of it at all, other than I thought he was a man that was very deeply interested in the welfare of the Government and was trying to use his best efforts to bring about peace.

Mr. CARLIN. What has been your opinion since he failed to pay the expenses he promised to pay?

Mr. KRAMER. I would hate to express that to this committee—what my opinion is now. It would not look very good in print, I am afraid.

Mr. CARLIN. Are you still under the impression that he is a philanthropist and anxious to promote peace?

Mr. KRAMER. No; I am satisfied he is not.

Mr. CARLIN. Have you any idea of any connection between Mr. Martin and his associates and any foreign Government?

Mr. KRAMER. No, sir; I did not have any opinion of that kind or any idea.

Mr. CARLIN. Have you that opinion now?

Mr. KRAMER. Only what I can see in the press. If we are to believe that possibly there is some truth in it, but I never heard a word in that connection.

Mr. CARLIN. How much money did you and your associates have to pay that Martin promised to pay?

Mr. KRAMER. There is one bill still pending in Chicago for printing pamphlets. I think it amounts to a little over \$500. That is still held against us. We have to pay the office rent for three months and stenographer's salary for the same period of time, and the miscel-

laneous other office expenses, such as light and drinking water and one thing and another. We have had to make good on those—and the telephone service.

Mr. CARLIN. Has it ever occurred to you that perhaps you have been "worked" in some way?

Mr. KRAMER. I am satisfied of that now.

Mr. CARLIN. It is not a very pleasant feeling?

Mr. KRAMER. No; it is not.

Mr. CARLIN. So far as your relations, or those of Mr. Buchanan, with the organization were concerned, you knew nothing secret that was ever done that the public could not know or ought not know, with reference to the peace movement?

Mr. KRAMER. Absolutely none.

Mr. CARLIN. What do you know about the connection of Schulteis with this matter?

Mr. KRAMER. I do not know anything. The first time I ever met the gentleman was when we held our first convention in Washington on June 22, when I was introduced to him but did not have any conversation with him at all. That is the first time I ever saw him, and I have not seen him since.

Mr. CARLIN. Do you know his relations to the peace council now, looking backward?

Mr. KRAMER. No. He seemed very anxious at the first convention to become connected with it as an associate counsel, and possibly would have done it had it not been for Mr. Buchanan's objection to it.

Mr. CARLIN. Do you know David Lamar?

Mr. KRAMER. No, sir; only by reputation. I have never met him.

Mr. CARLIN. Mr. Kramer, what is your idea as to where this money came from to pay the expenses of the peace council?

Mr. KRAMER. Mr. Fowler told me one time that they were not having very much funds, but he said that he had one year's salary as a Congressman that he was going to put into this affair, and that it was on deposit in Washington.

Mr. CARLIN. Seventy-five hundred dollars?

Mr. KRAMER. He said he had one year's salary that he had never touched, and that he was willing to put that into the peace movement, and we naturally supposed that Mr. Martin was going to be magnanimous to go out and use his money for the purpose.

Mr. CARLIN. That Mr. Martin was going to use Mr. Fowler's money for that purpose?

Mr. KRAMER. That Mr. Fowler was going to use that money. Whether Mr. Martin was drawing on that or not, I do not know.

Mr. CARLIN. Mr. Fowler did not agree to pay any of these expenses in Chicago, did he, that are now unpaid?

Mr. KRAMER. No; we never approached him on it.

Mr. CARLIN. Why did you not make the contract with the men who had the money?

Mr. KRAMER. We supposed Mr. Fowler was advancing this money to Mr. Martin. That is the way Mr. Straube and I figured it out.

Mr. CARLIN. In other words, you supposed Fowler was furnishing the money to Martin?

Mr. KRAMER. No. Fowler said he had one year's salary coming and he was going to put that in the peace movement.

Mr. CARLIN. You supposed Fowler was furnishing the money to Martin?

Mr. KRAMER. Yes.

Mr. CARLIN. Have you ever made demand on Fowler to pay this money?

Mr. KRAMER. No, sir; because Mr. Fowler did not say he would be responsible for any of the indebtedness back there.

Mr. CARLIN. If he was engaged in this philanthropic movement, it is quite likely he might have paid that?

Mr. KRAMER. Of course, we did not go to him. We felt we could not, because he had not made the promise that he was going to take care of it.

Mr. CARLIN. Looking backward, and summing the whole thing up, what is your view as to the financial operations of the peace council?

Mr. KRAMER. So far as the financial movements are concerned, it has been, if you will excuse a street phrase, mighty rotten. They have not carried out, with us particularly, their long promises. I would hate to express my opinion as to what I think of it.

Mr. CARLIN. When you say "they have not carried out their promises," whom do you mean by "they?"

Mr. KRAMER. I mean Mr. Martin and Mr. Fowler, the two men we were connected with. We did not know anybody else in it.

Mr. CARLIN. From your viewpoint, Mr. Martin and Mr. Fowler were really the moving spirits in the peace council financially?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. Mr. Fowler carried out such promises as he made?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. And Mr. Martin did not?

Mr. KRAMER. No, sir.

Mr. CARLIN. Is Mr. Fowler regarded as a man of means in Chicago?

Mr. KRAMER. I do not know, Mr. Chairman, because the first time I ever met him was in the early part of May. I never made much inquiry about him. I only knew he was a former Member of Congress.

Mr. NELSON. I would like to ask, in order to bring it out more definitely, how long it was before you resigned that Mr. Buchanan resigned?

Mr. KRAMER. Mr. Buchanan resigned in July, and it was after the convention that was held here in July that I told Mr. Straube to accept my resignation.

Mr. NELSON. About how many days?

Mr. KRAMER. I guess about a week or so.

Mr. NELSON. Just when did Mr. Martin come in as an officer of the peace council?

Mr. KRAMER. He must have come in at the second convention.

Mr. CARLIN. After Mr. Buchanan resigned?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. He was not an officer when Mr. Buchanan was an officer?

Mr. KRAMER. I do not think so. I am not positive, but I do not think he was. He was not one of the vice presidents, unless he was considered—

Mr. NELSON (interposing). Who was the secretary?

Mr. KRAMER. Mr. Straube.

Mr. NELSON. Then he could not have been the secretary?

Mr. KRAMER. No, sir.

Mr. NELSON. He was not treasurer?

Mr. KRAMER. No, sir.

Mr. NELSON. And you do not think he was vice president?

Mr. KRAMER. No; he was not; I am positive of that.

Mr. NELSON. Then he was not president?

Mr. KRAMER. No.

Mr. NELSON. Did you have anything besides officers in the council?

Mr. KRAMER. We had an executive board in addition to that.

Mr. NELSON. Who were the members of the executive board, outside of these officers?

Mr. KRAMER. As nearly as I can recall, it was the president and the vice presidents who constituted the executive board.

Mr. NELSON. Outside of your officers, did you have any others from the peace council who were not officers?

Mr. KRAMER. No, sir; Mr. Fowler, of course——

Mr. NELSON (interposing). He was associate counsel?

Mr. KRAMER. Yes.

Mr. NELSON. You joined the peace council at the first convention here in Washington, or in Chicago?

Mr. KRAMER. In Chicago, we started a local peace council first, you understand, the same as we were doing in all the large cities where there was a central labor body.

Mr. NELSON. What did they tell you, when you joined, that they were going to do in this peace council? What was it for?

Mr. KRAMER. It was for the purpose of organizing local peace councils in every city where there was a central body.

Mr. NELSON. How were these peace councils to operate?

Mr. KRAMER. They were to be operated with instructions from the National Peace Council.

Mr. NELSON. What were they to do—these local peace councils?

Mr. KRAMER. They were to create a sentiment along the line of peace.

Mr. NELSON. Were they in any way to do anything affecting the nations at war?

Mr. KRAMER. They had indorsed a resolution at the first convention that was held here.

Mr. NELSON. To do what?

Mr. KRAMER. To take over the patent rights of the manufactures of munitions of war—that the Government was to do that.

Mr. NELSON. They were to create public sentiment and public opinion?

Mr. KRAMER. Yes.

Mr. NELSON. Were they going to the factories, to be active in the agitation of the labor there?

Mr. KRAMER. No, sir; the purpose was to call a convention in Washington and try to bring about an extra session of Congress.

Mr. NELSON. You never heard it discussed in your presence by any of the officers while you were a member that the purpose was to foment strife in any munitions factory?

Mr. KRAMER. Absolutely not a word.

Mr. NELSON. It was purely public in the sense of agitating for peace and against the sale of munitions abroad?

Mr. KRAMER. Yes, sir.

Mr. NELSON. And for the establishment of an armor plant by the Government?

Mr. KRAMER. Yes, sir; and to use their very best efforts to bring about peace abroad?

Mr. NELSON. While you were in the grand jury room, you say there were four men at the table?

Mr. KRAMER. As nearly as I can recollect, there were four at the table where I sat.

Mr. NELSON. Are you including yourself, or would there be five, with you?

Mr. KRAMER. As nearly as I can recollect, there were four, including myself.

Mr. NELSON. One was yourself and another was Mr. Sarfaty?

Mr. KRAMER. Yes, sir.

Mr. NELSON. The third was the stenographer?

Mr. KRAMER. Yes, sir; and the other one was the foreman of the jury, as I understand it.

Mr. NELSON. Who was the other man?

Mr. KRAMER. I do not know.

Mr. NELSON. Was he the secretary of the grand jury? Was he taking notes?

Mr. KRAMER. There was a stenographer there.

Mr. NELSON. The stenographer, of course, was taking notes?

Mr. KRAMER. Yes.

Mr. NELSON. Was there anyone else taking notes?

Mr. KRAMER. Not that I remember.

Mr. NELSON. That fourth man sat silently at the table?

Mr. KRAMER. Yes, sir. I was not asked any questions by any of the men at the table except Mr. Sarfaty.

Mr. NELSON. The grand jury was off to one side?

Mr. KRAMER. Yes, sir; sitting in tiers.

Mr. NELSON. Did the seats seem to be all filled, or were there some vacant chairs?

Mr. KRAMER. I can not recall.

Mr. NELSON. How do you know it was the foreman at the table?

Mr. KRAMER. I did not know.

Mr. NELSON. Were you introduced to him?

Mr. KRAMER. I heard Mr. Sarfaty say he was the foreman.

Mr. NELSON. Oh, he told you it was the foreman sitting there?

Mr. KRAMER. Yes; he asked this gentleman if he had any questions to ask me.

Mr. NELSON. After you finished your testimony before the grand jury, you were taken over to some chief. You called him what?

Mr. KRAMER. Mr. Offley.

Mr. NELSON. What did he have to do with you and why were you taken there?

Mr. KRAMER. I do not know. Mr. Sarfaty took me over there. He said he wanted to take me over to see Mr. Offley, the chief, as he wanted me. We went over there and he began to talk about this—

Mr. NELSON (interposing). Did he seem to be dissatisfied with your testimony before the grand jury?

Mr. KRAMER. Mr. Sarfaty?

Mr. NELSON. No; the chief.

Mr. KRAMER. The chief was not in the room during my testimony before the grand jury.

Mr. NELSON. What was the object in taking it up again, apparently, and showing you these telegrams and going over the misdeeds of some of these men?

Mr. KRAMER. I do not know what his object was.

Mr. NELSON. What did he assign as his reason for taking it up?

Mr. KRAMER. He did not give any reason.

Mr. NELSON. How did he come to do it?

Mr. KRAMER. I do not know. Mr. Sarfaty told me, "Come on, we will go over and see the chief."

Mr. NELSON. What did he then say to you?

Mr. KRAMER. I was introduced to Mr. Offley, and he began to ask me where I was located.

Mr. NELSON. Did he ask if you had been before the grand jury?

Mr. KRAMER. No, sir.

Mr. NELSON. Did he ask what you testified to before the grand jury?

Mr. KRAMER. No, sir.

Mr. NELSON. I would like to have you make it clear how you came to enter into conversation with him and how he came to show you the telegrams and all that?

Mr. KRAMER. He told me this—he said, "We have got the goods on some of these people."

Mr. NELSON. Did he mention who these people are, by name?

Mr. KRAMER. No. I said I did not know anything about that. He said, "What were you doing down in Watertown and New York?" I said, "I haven't been in New York." He said, "You were in Ilion, N. Y., wasn't you?" I says, "No;" I says, "I haven't been in New York State for over a year," I says. Then he asked me if I knew anything about these telegrams which were signed "K."

Mr. NELSON. How many were there?

Mr. KRAMER. I think there were three all together.

Mr. NELSON. What was the purport of those telegrams?

Mr. KRAMER. One of them, I recall, was from Ilion, N. Y., or Watertown, N. Y., and stated that there were, I think, "1,500 or 2,500 men out here; require \$25,000 to hold them. Send 15,000 by special messenger, balance to follow," signed with a "K."

Mr. NELSON. And the three were all of that purport?

Mr. KRAMER. They all had about that same tone to it, you know.

Mr. NELSON. They were of the same tone and all signed by the same initial "K"?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. To whom were the telegrams addressed?

Mr. KRAMER. One of them was addressed—I think two of them were—to Martin.

Mr. CARLIN. I thought you said just now you did not know.

Mr. KRAMER. The one I did not know about. I could not see that, because he just turned them over and I simply had to take a quick glance at them.

Mr. CARLIN. And two of them you do know?

Mr. KRAMER. Yes.

Mr. CARLIN. They were addressed to whom?

Mr. KRAMER. Martin.

Mr. NELSON. That is the Martin with whom you have had correspondence?

Mr. KRAMER. Yes, sir.

Mr. NELSON. You said you were not the "K" that signed those, I presume?

Mr. KRAMER. Sure.

Mr. NELSON. Were those telegrams in ink?

Mr. KRAMER. No; they were photographs, on a black background, and the type showed up in white on it.

Mr. CARLIN. Did they show the signature?

Mr. KRAMER. Yes; just simply the letter "K." That was all there was.

Mr. CARLIN. Was the "K" by pen or by typewriting?

Mr. KRAMER. It was typewriter.

Mr. NELSON. Did he proceed to put you through a further sweating process on the subject matter?

Mr. KRAMER. Yes; he began to ask me about this man Cundiff who had been out doing some organizing.

Mr. NELSON. He was the Chicago man, was he?

Mr. KRAMER. Yes. He wanted to know how he got connected with the peace council, and I told him that he got connected with it through my recommendation to Mr. Buchanan; that Mr. Buchanan put him on the road to go and visit these different central bodies, and then after Mr. Buchanan had severed his connections, Mr. Martin continued Mr. Cundiff.

Mr. NELSON I thought you stated Mr. Martin became secretary afterwards?

Mr. KRAMER. No; I did not say that.

Mr. NELSON. What was his official position?

Mr. KRAMER. His last position?

Mr. NELSON. No; his official position in the peace council after Mr. Buchanan had resigned.

Mr. KRAMER. I do not know that he held any official position unless he was elected at the last convention.

Mr. NELSON. Do you know whether he ever became an officer of the peace council or not?

Mr. KRAMER. No; I do not.

Mr. NELSON. In the correspondence you had with him, did he use the stationery of the peace council?

Mr. KRAMER. I am not so sure about that. It appears to me that he did once or twice.

Mr. NELSON. Did he sign himself in any way as an officer?

Mr. KRAMER. No, sir.

Mr. NELSON. Simply as "Martin"?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. How could he continue the services of Cundiff?

Mr. GARD. What is Mr. Cundiff's correct name and address?

Mr. KRAMER. I. J. Cundiff. I do not know his home address.

Mr. CARLIN. How could Martin continue the services of this man?

Mr. KRAMER. I can not answer that.

Mr. CARLIN. You recommended him for employment to Mr. Buchanan?

Mr. KRAMER. I recommended him to Mr. Buchanan.

Mr. CARLIN. Who recommended him to Martin after Mr. Buchanan resigned?

Mr. KRAMER. I do not know; I did not.

Mr. CARLIN. How did Martin come in connection with him?

Mr. KRAMER. Mr. Martin knew Mr. Cundiff had been doing some organizing for Mr. Buchanan.

Mr. CARLIN. Do you know whether this gentleman applied to Martin, or did Martin take him on without any application?

Mr. KRAMER. I suppose he did. I do not know how he got connected up with Martin.

Mr. CARLIN. Did Martin carry out his promise to him to pay?

Mr. KRAMER. No; he still owes Mr. Cundiff something like three or four hundred dollars salary, I think.

Mr. CARLIN. Martin seems to have been able to get a great many people employed without paying them?

Mr. KRAMER. Evidently.

Mr. NELSON. What was Mr. Cundiff doing when Mr. Buchanan sent him out?

Mr. KRAMER. He was told to go and visit all the central bodies at these different points that Mr. Buchanan and the secretary had outlined, and arrange meetings ahead.

Mr. NELSON. Meetings for Mr. Buchanan to speak?

Mr. KRAMER. No. The central bodies meet sometimes twice a month and sometimes, in some cities, once a week. They would arrange through a representative of the peace council to be at the central bodies' meeting to address them on this peace-council proposition, and, if possible, organize a local council, and that was the duty of Mr. Cundiff.

Mr. NELSON. Do you know what his duties became after Mr. Martin took charge of his work?

Mr. KRAMER. I suppose it was along the same lines.

Mr. NELSON. You do not know anything about that?

Mr. KRAMER. No.

Mr. NELSON. Did you converse with Mr. Cundiff after that about his work?

Mr. KRAMER. I asked where he had been, and he told me he had been down to Ilion, N. Y., and I think he said he had been up in Minneapolis some place.

Mr. NELSON. Did he say anything as to whether his work had been changed after he had this new arrangement?

Mr. KRAMER. No, sir. I did not get to see much of him after that.

Mr. CARLIN. Did you get Mr. Buchanan into this peace-council organization, or did he get you in?

Mr. KRAMER. He got me in.

Mr. CARLIN. Who got him in, do you know?

Mr. KRAMER. I do not know.

Mr. CARLIN. You got Cundiff in?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. Who else did you get in?

Mr. KRAMER. I recommended Mr. Straube. They were both out of employment. Mr. Cundiff had been on strike in the Illinois Central Railroad strike for almost four years, and had been deprived of his wages, and was simply, as we term it, down and out.

Mr. CARLIN. What was his business?

Mr. KRAMER. He was a boiler maker by trade. He was also secretary of some local federation of boiler makers there.

Mr. CARLIN. Was he to be paid?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. You say he was out of employment. Who was to pay him?

Mr. KRAMER. Mr. Buchanan was to pay him.

Mr. CARLIN. The only two you got into this association, you got in on salary?

Mr. KRAMER. Yes.

Mr. CARLIN. One of them, so far as you know, was paid, and the other one was not paid?

Mr. KRAMER. Both of them were paid for a very short time, and then they were not paid at all.

Mr. CARLIN. Did they continue their employment after they failed to receive their compensation?

Mr. KRAMER. No; we were compelled to discontinue the headquarters.

Mr. CARLIN. Mr. Kramer, to get right down to the bottom of this thing, what is your idea, based upon your connection with this council, as to the connection of Martin and Schulteis and Lamar with this peace council?

Mr. KRAMER. I have not had any connection, you understand, with Mr. Schulteis nor Mr. Lamar. As I said, I only met Mr. Schulteis on June 22, when they held the convention here. I do not know anything at all about him. I do not know Mr. Lamar only by reputation through the press. The other men I met through Mr. Buchanan—Mr. Martin and Mr. Fowler. I really do not know what to say. Do you want my opinion of them now?

Mr. CARLIN. I want your opinion of it now, looking backward; yes.

Mr. KRAMER. As I said before, my opinion would not look very good in print.

Mr. CARLIN. I want your opinion as to whether or not you believe you were actually engaged in an honest peace movement, or whether there was some other motive in this matter.

Mr. KRAMER. I personally believed that I was. I personally believed on account of my close association with Mr. Buchanan that we were engaged for legitimate purposes to bring about peace abroad and keep our own country out of war.

Mr. CARLIN. What do you believe now?

Mr. KRAMER. I do not believe, in the later developments, since the second convention of labor's national peace council, that they were sincere.

Mr. CARLIN. What do you think was the motive?

Mr. KRAMER. I do not know what their motive was. A person can suspect.

Mr. CARLIN. But you found yourself associated with Martin and Schulteis and Lamar?

Mr. KRAMER. No; I was not connected with Lamar.

Mr. CARLIN. You believed you were promoting peace at home and abroad?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. You believed at that time that was their purpose?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. What do you believe now was their purpose?

Mr. KRAMER. I do not believe they were sincere.

Mr. CARLIN. If not sincere, what do you think their purpose was?

Mr. KRAMER. I think their purposes were to try to get all the money they could.

Mr. CARLIN. From whom?

Mr. KRAMER. From some source. I formed my opinion on those telegrams that I saw, and the information as given to me by Mr. Offley, and the conversation we had after I had testified before the grand jury.

Mr. CARLIN. The conversation you had with Martin?

Mr. KRAMER. No; with Mr. Offley. I had no conversation with Mr. Martin. I have not seen Mr. Martin since a few days before the convention was held here in Washington in July. I have not seen him since.

Mr. CARLIN. You said you believe their purpose was to get money from some source, as much as they could. Have you any idea that the source was a source designed to make peace or to make trouble?

Mr. KRAMER. Evidently it was eventually to create trouble.

Mr. CARLIN. Then your belief is that the inspiring motive behind Martin, and those who were interesting honest men in this movement, was to involve this country in trouble?

Mr. KRAMER. I would hate to say that, Mr. Carlin, that they wanted to involve the country in trouble.

Mr. CARLIN. Whom were they going to involve in trouble?

Mr. KRAMER. I think possibly, from their actions, they have tried to represent to someone that they were able to bring about some results to stop the manufacture of munitions, and get the money for for doing it. Mr. Offley told me this—

Mr. CARLIN (interposing). Who could be interested in stopping the manufacture of munitions in this country?

Mr. KRAMER. Not likely the Allies. I want to tell you what Mr. Offley told me.

Mr. CARLIN. Will you answer my question first? Who would be interested in stopping the manufacture of munitions in this country?

Mr. KRAMER. I suppose Germany.

Mr. CARLIN. Connecting that statement with your former statement, do you wish to be understood that Martin and his associates were attempting to procure money from Germany?

Mr. KRAMER. Yes; from the information that I have from Mr. Offley.

Mr. CARLIN. Is that your belief?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. You have not reached any such conclusion as that with reference to Representative Buchanan, have you?

Mr. KRAMER. I have not any reason to.

Mr. CARLIN. You have not any reason do to so now, have you?

Mr. KRAMER. No, sir.

Mr. CARLIN. I gather from what you have said that you seem to be under the impression that you and those associated with you, other than Martin and Schulteis and his associates, have been "worked" and used?

Mr. KRAMER. That Schulteis has been worked?

Mr. CARLIN. No; that Schulteis and Martin and Lamar had worked you gentlemen in some way.

Mr. KRAMER. Yes; to the queen's taste.

Mr. CARLIN. That is your belief about it?

Mr. KRAMER. Yes.

Mr. CARLIN. Tell us now all that Mr. Offley said to you.

Mr. KRAMER. He began, as I told you, showing me these telegrams and one thing and another, and he asked whether I had received any money from Mr. Martin or Mr. Fowler or Mr. Lamar, and I told him I didn't know Mr. Lamar only by reputation. He says, "They have got a whole lot of it." He says, "Lamar at least got \$250,000." I says, "That is 250,000 more than I have seen." He says, "They were getting the money right along," but he didn't say where it was coming from. Whether he done that to draw me out in any way, I don't know, but he gave me to believe they were getting big sums of money and that Lamar and Martin and Schulteis had made some of the German agents believe that they had a finger on the button that could call strikes in any munitions plant in the country. I says, "If the German agents believe that," I says, "they are very foolish, because Mr. Martin or Mr. Schulteis or Mr. Lamar or anyone else is not in a position where they can call strikes in munition plants. That must be done by internationals affiliated with the American Federation of Labor." He says, "They have simply fooled those fellows." That is the general tone that ran through that conversation. Then he began to ask me about Mr. Straube, the secretary, and about Mr. Cundiff, and asked me what connection Mr. Buchanan had with it. I told him Mr. Buchanan had severed his connection with Labor's National Peace Council in July. That is all I can recall.

Mr. NELSON. Can you fix the exact date that this occurred when you were talking with this man?

Mr. KRAMER. I think it was on December 2, because I got back from the coast and got home on Thanksgiving Day last, and it was a few days after that that I was subpoenaed.

Mr. NELSON. How long after that was it that Mr. Buchanan filed his first impeachment charges against Mr. Marshall or that you noticed it in the newspapers?

Mr. KRAMER. I can not recall just how long.

Mr. NELSON. Was it before or after your being in New York?

Mr. KRAMER. I think it was after.

Mr. NELSON. Was there an indictment brought against Mr. Buchanan shortly after you had been there to New York?

Mr. KRAMER. Yes, sir.

Mr. NELSON. After your testimony?

Mr. KRAMER. As I said before, there was three other men that were called down to New York after me, but as I understand it from them, they did not appear before the grand jury.

Mr. NELSON. Did they tell you so?

Mr. KRAMER. Mr. Canode did. I asked him if the jury was still in session, and he says "No."

Mr. NELSON. Did he say he had been called down there, but was not taken to the grand jury room?

Mr. KRAMER. Yes, sir.

Mr. NELSON. Did anyone else say so.

Mr. KRAMER. Mr. Cundiff was there when I was in New York, and I left that same night that I testified, and Mr. Cundiff was closeted with Mr. Sarfaty and Mr. Offley when I left there.

Mr. NELSON. Do you know from your own knowledge or from what he told you, whether he was brought before the grand jury or not?

Mr. KRAMER. I do not recall ever asking or whether he ever told me about it.

Mr. NELSON. You read in the newspapers that he was or was not taken before the grand jury.

Mr. KRAMER. The papers said he was. The Chicago papers said that Mr. Canode, Mr. Straube, and Mr. Cundiff appeared before the grand jury.

Mr. NELSON. But you just stated you understood that neither of them had been before the grand jury, did you not? My impression was they were not before the grand jury.

Mr. KRAMER. I am only telling you now what I saw in the papers.

Mr. NELSON. That they were not?

Mr. KRAMER. That they were. The newspapers' articles said they had appeared before the grand jury.

Mr. NELSON. I thought you said a moment ago that you thought they were not before the grand jury.

Mr. KRAMER. I noticed in the paper only those three gentlemen had appeared before the grand jury.

Mr. NELSON. Afterwards?

Mr. KRAMER. Yes.

Mr. NELSON. Then I misunderstood you. You referred to the second convention of the Peace Council. That occurred after Mr. Buchanan had resigned?

Mr. KRAMER. Yes.

Mr. NELSON. What occurred at that convention that led you to think that the original purpose had been changed?

Mr. KRAMER. I was not at that convention.

Mr. NELSON. What did you know of that convention that led you to think that?

Mr. KRAMER. They had gotten, I think, three different farmers' organizations interested, the Farmers' Equity and I don't know the names of the other two organizations, but they are farmers.

Mr. NELSON. I wish you would substitute some name for "they." Who are "they"?

Mr. KRAMER. I mean the three organizations.

Mr. NELSON. You say "they" had gotten some farmers' organizations. Who are "they"?

Mr. KRAMER. When I say "they" I mean Mr. Martin and Mr. Fowler, because they had made several trips to interest the heads of the farmers' organizations in order to get them to come to Washington and hold separate conventions and then hold a joint convention. I did not believe that it was the proper thing to do. I believed they were getting away from the real purpose of the organization as originally started; that it was a labor movement and that they were dragging in the farmers' organizations, and I do not know what other organizations they would have dragged into it if time had permitted it.

Mr. NELSON. But you had resigned before that?

Mr. KRAMER. That was in July they held the convention.

Mr. NELSON. The second convention?

Mr. KRAMER. Yes. I did not go to the convention, and it was after that in August that I resigned.

Mr. NELSON. Who reported to you the doings of that second convention?

Mr. KRAMER. Mr. Straube.

Mr. NELSON. What did he tell you?

Mr. KRAMER. He just told me about the election of a new president, the acceptance of—

Mr. NELSON (interposing). Who was the new president?

Mr. KRAMER. Mr. Taylor.

Mr. NELSON. And he continued as secretary?

Mr. KRAMER. The same secretary; Mr. Straube. He told me about them electing new officers and adopting some resolutions, joint resolutions, but I never saw them.

Mr. NELSON. Did he say he had made some arrangements with these former organizations whereby they were to cooperate?

Mr. KRAMER. No.

Mr. CARLIN. Was there any protest against the holding of this second convention?

Mr. KRAMER. Yes, sir; by Mr. Buchanan.

Mr. NELSON. In what form did he protest?

Mr. KRAMER. He protested on the ground it was an inopportune time for a convention of that kind, and he gave as his reasons that it was a labor organization, Labor's Peace Council, and he did not believe that other organizations should be connected with it.

Mr. CARLIN. Who called the second convention?

Mr. KRAMER. The executive board. They took a vote on the calling of the convention over the protest of Mr. Buchanan.

Mr. CARLIN. When did Mr. Buchanan resign, do you recall? Was it after the second convention?

Mr. KRAMER. No; it was prior to the second convention.

Mr. CARLIN. He resigned after protesting, and his protest was not respected?

Mr. KRAMER. He protested against the calling of this second convention, but the executive board overruled him and then he resigned.

Mr. CARLIN. Referring now to Fowler's connection with this matter, have you any impressions about that now that you did not have when you first permitted him to pay your expenses here?

Mr. KRAMER. Understand, Mr. Chairman, we had not made any arrangements with Mr. Fowler about taking care of the expenses of the Chicago headquarters.

Mr. CARLIN. I understood you did make arrangements with Mr. Fowler to take care of those expenses of yours—your own expenses in coming to Washington.

Mr. KRAMER. He paid me that out of his own pocket.

Mr. CARLIN. How do you know it came out of his own pocket?

Mr. KRAMER. I mean he took it out of his own clothes and paid me. I do not know who put it there.

Mr. CARLIN. Have you any idea about who put it there?

Mr. KRAMER. No; I have not.

Mr. CARLIN. Do you believe it was Mr. Fowler's own money?

Mr. KRAMER. I had every reason to believe it.

Mr. CARLIN. Do you believe it now?

Mr. KRAMER. On the strength of what he told us—that he had a whole year's salary to draw from that he never touched, as a Congressman.

Mr. CARLIN. Do you believe that now?

Mr. KRAMER. I do not know. I do not think it was.

Mr. CARLIN. You do not think it was?

Mr. KRAMER. No, sir.

Mr. CARLIN. Mr. Kramer, we are trying to get at one fact that is overlooked a little, and that is as to the publication in the Chicago Tribune. Did you gather the impression from your talk with Mr. Kendall and his talk with you that somebody was engaged in coloring those articles?

Mr. KRAMER. As I stated before, he called me up, and as soon as he told me who he was I told him, "Mr. Kendall, I am done with you folks, because you do not appear to want to tell the truth." I says, "You know that article is absolutely wrong." I says, "I don't want anything more to do with you," I says, "and I would rather you wouldn't call me up." He says, "That is not my fault. I didn't do that." That is the only thing that was said.

Mr. CARLIN. We are investigating the office of H. Snowden Marshall in connection with this transaction. Do you know of anything that would lead you to believe that H. Snowden Marshall, or anybody connected with his office, was instrumental in procuring this publication?

Mr. KRAMER. No; I have not the least idea.

Mr. CARLIN. Do you know of any fact that would indicate or lead you to believe that the office of the district attorney of New York, in the prosecution of these indictments or in the publications which you have seen, has been guilty of anything improper?

Mr. KRAMER. No, sir.

Mr. CARLIN. Did you ever make use of the expression that "somebody is spilling the beans"?

Mr. KRAMER. No, sir.

Mr. CARLIN. So far as you are aware, there is nothing improper in Representative Buchanan's relations to this peace council?

Mr. KRAMER. Absolutely none.

Mr. CARLIN. That was your belief at the time?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. That is your belief now?

Mr. KRAMER. Yes, sir.

Mr. CARLIN. You have changed your mind as to the others, however, have you?

Mr. KRAMER. Yes, sir.

Mr. NELSON. You used the word "rotten"—that the financial management was "rotten." Did you mean that that was confined to the failure on the part of Martin and some of these others to pay the expenses?

Mr. KRAMER. Yes, sir.

Mr. NELSON. Or was there some use of the finances that you had in mind?

Mr. KRAMER. No; I had reference to their failing to make good with the expenses we incurred.

Mr. NELSON. While you were connected with the peace council, and while Mr. Buchanan was connected with it, have you any knowl-

edge of any fact which would leave you to believe, or that you could tell this committee, that Mr. Buchanan was in any way connected with Schulteis, Martin, or Lamar in their activities?

Mr. KRAMER. I do not know of a thing.

Mr. NELSON. You will swear positively that you do not know of a thing?

Mr. KRAMER. Yes, sir; I will swear to that.

The CHAIRMAN (Mr. Webb). Mr. Kramer, you say Mr. Cundiff was connected with this peace council?

Mr. KRAMER. Yes, sir; as an organizer.

The CHAIRMAN. When was it he told you he had been down to Ilion, N. Y.?

Mr. KRAMER. The first I knew he had been to Ilion, N. Y., was when I got to New York City and was talking to Mr. Offley.

The CHAIRMAN. When did he tell you he had been to Ilion?

Mr. KRAMER. At that time.

The CHAIRMAN. He had just gotten back then from Ilion?

Mr. KRAMER. No; he said he went to Ilion. He was here attending some convention in July; and while here he said that Mr. Martin started him to Ilion, N. Y.

The CHAIRMAN. What manufacturing plant is at Ilion?

Mr. KRAMER. I really do not know. I never was in the town myself.

The CHAIRMAN. Do you know that it is the Remington Arms Works?

Mr. KRAMER. No; I do not.

The CHAIRMAN. Do you know who paid his expenses to Ilion?

Mr. KRAMER. I suppose Mr. Martin.

The CHAIRMAN. Did he tell you what he did down there?

Mr. KRAMER. He did not tell this directly to me. He told it to Mr. Offley and Mr. Sarfaty in my presence, that he was ordered to go to Ilion and report the condition of affairs, and when he got there he found out there was a strike on at that place, and he met some other organizer from—I can't just recall the man's name—and he wired to Mr. Martin that there was a strike on—no; he had been ordered to go there and wait for further orders, and while he was there—I think he said the second day or the day after he had arrived—the trouble was adjusted and the men went back to work. He then came back to Washington, I think. That is a statement that he made to Mr. Offley in my presence.

The CHAIRMAN. Did you see anything in the newspapers along about August or September to the effect that this peace council was being investigated by the Department of Justice?

Mr. KRAMER. No, sir.

The CHAIRMAN. You never saw in the newspapers, before you went to New York, that these gentlemen were being investigated and that one Congressman and an ex-Congressman were being investigated?

Mr. KRAMER. I do not recall it, because when I was subpoenaed to New York I did not know what it was for. I asked the deputy marshal when he subpoenaed me, "What is this for"? and he says, "I don't know; and you are to report to New York; to be there"—it was on Friday, I think, on the 2d. I am pretty sure it was the 2d of December. I did not know what I was going to New York for until I

got there and handed in the card that they gave me to get my mileage. Then he referred me to Mr. Sarfaty.

Mr. CARLIN. Mr. Kramer, we will excuse you now. If we need you again, we will advise you.

(Witness excused.)

TESTIMONY OF BEN KENDALL, OF CHICAGO, ILL.

(The witness was duly sworn by Mr. Carlin.)

Mr. CARLIN. Please give your full name.

Mr. KENDALL. Ben Kendall.

Mr. CARLIN. Your residence.

Mr. KENDALL. Chicago.

Mr. CARLIN. Your occupation.

Mr. KENDALL. Reporter on the Chicago Tribune.

Mr. CARLIN. What is your address in Chicago?

Mr. KENDALL. 1537 East Sixty-first Street.

Mr. CARLIN. Were you a reporter on the Chicago Tribune on December 29, 1915?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. I hand you a copy of the paper of December 29, marked "Exhibit B," and designated as the Chicago Daily Tribune. I invite your attention to an article on page 3, to the first and second and third columns thereof, which article is entitled "Labor council chiefs indicted as war plotters," and ask you if you wrote that article?

Mr. KENDALL (after examining the paper). No, sir; not all of it.

Mr. CARLIN. How much of it did you write?

Mr. KENDALL. There are various excerpts that I might pick out in here. From where it says "Witnesses tell stories," at the bottom of the first column. That is the heading of the part. The rest of it I wrote. That is verbatim, almost. It is about a column.

Mr. CARLIN. Who wrote the first part of that?

Mr. KENDALL. The New York correspondent, I suppose.

Mr. CARLIN. Who is he?

Mr. KENDALL. Murphy.

Mr. CARLIN. Why do you suppose he wrote it?

Mr. KENDALL. It is marked "New York, December 28, special," and that means our correspondent there wrote it.

Mr. CARLIN. What is Mr. Murphy's full name?

Mr. KENDALL. I do not know, but he is in the New York Sun office. He has an office in the New York Sun.

Mr. CARLIN. Do you know whether this article was written by him or not?

Mr. KENDALL. No, sir.

Mr. CARLIN. You only suppose he wrote it because it has a New York headline?

Mr. KENDALL. Yes, sir; he is our correspondent there.

Mr. CARLIN. The headline gives the impression that the whole article was written in New York, does it not?

Mr. KENDALL. No, sir.

Mr. CARLIN. I mean the date line?

Mr. KENDALL. "New York, December 28, special." Then it starts off, "Eight men, including a Congressman," etc. Then they

have small heads. They call them "6-caps" and "8-caps," and that designates the size of the type. Wherever a 6-cap appears, that means it is a new story entirely. Here you will notice one story says "New York," and then it runs for about two hundred and fifty words, and then it says in 6-cap type, "May expel Buchanan," and then the date line, "Washington, D. C., December 28, special." Then it goes on with little subheads. Those are small type. Then that story ends, and a new story begins with a new head on it. My story is really under a Washington date line.

Mr. CARLIN. Does it appear in the article in that way? Does your story appear under the Washington date line?

Mr. KENDALL. No, sir; mine appears as local. They are called local date lines. Here [indicating] is the Washington date line. That designates a new story; that is a Washington story. Then a head where there is no date line and that means a local story.

Mr. CARLIN. So far as the reader of the paper is concerned, the only date line that would appear to him would be the New York date line? Is not that true?

Mr. KENDALL. No, sir; he would see the Washington date line after he read about 200 words.

Mr. CARLIN. Yes; I had overlooked the fact that that is there. Is there a local date line on the article too?

Mr. KENDALL. No, sir. You do not put a date line on a local story.

Mr. CARLIN. But what you refer to as local appears under the Washington date line?

Mr. KENDALL. It immediately follows the Washington story.

Mr. CARLIN. What would give the impression to the reader of the paper that the whole story below the Washington date line was a Washington story.

Mr. KENDALL. I would not presume to say, but I do not think so. A person that is familiar with newspaper stories would know, because the story plainly states that "in Chicago" and "two Chicago men."

Mr. CARLIN. Who wrote the Washington story.

Mr. KENDALL. I do not have any idea, because we have two men here, a Mr. Henning and a Mr. Hanson.

Mr. CARLIN. You would suppose it was one or the other?

Mr. KENDALL. Yes, sir; and it is possible that the Associated Press may have sent it, or the United Press, or any of the press associations. We may have two or three correspondents in one town and use the best story.

Mr. CARLIN. What are the names of the two gentlemen? Do you know their initials?

Mr. KENDALL. Mr. Hanson is the name of one, and Arthur S. Henning is the other.

Mr. CARLIN. Where can they be found?

Mr. KENDALL. I think it is the Wyatt Building. I am not familiar with Washington.

Mr. CARLIN. Did you have any conversation with Mr. Kramer about this article?

Mr. KENDALL. Yes, sir; before the article, I did.

Mr. CARLIN. Did you have any conversation with him after the article was published?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. Tell us what those conversations were.

Mr. KENDALL. We received a wire from New York that indictments—it must have been several days before. It was around December 5 or 6 when I first talked to Mr. Kramer. That was when we heard rumors that there was going to be an indictment returned. I asked him about the Labor Peace Council, and wanted some of the propaganda. Before that I talked to him on the telephone around July, when there was talk that there was something wrong with the Labor Peace Council. I talked to him, and he said their interest in it was simply to promote peace, and in substance he said that his idea in being in it or becoming a member was to prevent strikes and to settle strikes and to advocate the Government control of munitions factories, if munitions had to be made, and the primary purpose was to prevent the manufacture of munitions; but if they had to be made, that the Government should make them. That is the substance of his talk to me. I was not much interested in that. I wanted to know who was financing the Labor Peace Council, who was paying for the offices they had in Chicago, and where the money came from. I asked him, and he said he did not know. I asked him who was doing the printing, who had these pamphlets printed. He said a man named Canode, Charles H. Canode. I asked who paid the bills, and he said he did not know. He thought Mr. Buchanan paid the bills. I asked where Mr. Buchanan got the money or if he was paying it out of his own pocket, and he said he did not know. I asked if Mr. Buchanan was a poor man or a man of ordinary means and whether he could afford that, and he said he did not know. He also said, I think, there was Henry B. Martin; that the bills were attended to by Henry B. Martin and Mr. Buchanan; that they had made no statement that they were to attend to the bills, but that was the general understanding that they would, because Mr. Buchanan was actively engaged in building up the Labor Peace Council or in making an organization that would stand up. Mr. Kramer I have known as a man of good standing and as credited with being one of the men in Chicago in the labor world that had a good reputation as far as I ever knew.

Mr. CARLIN. Was this article printed just as you wrote it?

Mr. KENDALL. I write so much that I really do not know whether the copy reader changed it or not. Most of the time I do not read it. I do not think I read this story. I could not find it in the files when I was subpoenaed. I looked through the files and could not find it. I do not always read the stories that I write after I write them.

Mr. CARLIN. Did you state that the article was not printed as you wrote it?

Mr. KENDALL. Yes, sir; I think I did. I think I told some one that the quotation marks had been changed around so that I had somebody saying something that somebody else said. The copy readers usually do that, but if I hand in five pages of copy where I am quoting a man, and it will run down, the first page comes first, then the second page, and they may get the fourth page mixed up with the third page and put the fourth page where the third page ought to be, and the third page follows right along where I am quoting another man.

Mr. CARLIN. Is it the practice to put New York and Washington date lines on articles that emanate from Chicago?

Mr. KENDALL. That is never done. Sometimes they have no headline over a story that originated in New York. If we get a tip from New York that something happened, and the correspondent says "Don't tip off where you got the story" or "Don't let it be known as coming from New York," then we write it with what we call a local angle and put in no date line.

Mr. CARLIN. You never put a date line on an article unless the article comes from the place that the date line indicates?

Mr. KENDALL. No, sir; not that I ever heard of.

Mr. CARLIN. You do not mean for the committee to understand that somebody changed this article that you wrote, so that it appeared differently from the way you wrote it?

Mr. KENDALL. No, sir; the meaning in that story is the meaning I intended to put in it.

Mr. CARLIN. What have you to say about Mr. Kramer's statement that he only made two statements to you that are contained in the whole article?

Mr. KENDALL. I do not know exactly the statement that he referred to. I say here: "William F. Kramer, one of the vice presidents of the Labor Peace Council, had the following to say." I believe that is the only place where he is quoted. "The gang went about the work and got away with it by pretending to be agents of the Labor Peace Council. The Labor Peace Council knew nothing about their acts"——

Mr. CARLIN (interposing). That is your statement?

Mr. KENDALL. Those are my words. I am not quoting him verbatim. Those are my words, and I follow along the impression that I got from him. We were talking about some one—I will tell you the story as I got it. Everything I write is something I get from some one else, of course. I could not be on the scene or be mixed in with it and learn it at first hand, but David Lamar is supposed to have \$500,000——

Mr. CARLIN (interposing). Who supposed that he had it?

Mr. KENDALL. That was the impression I got from people talking around Chicago that had been connected with or had been members of the Labor Peace Council.

Mr. CARLIN. What people?

Mr. KENDALL. I might say I mentioned that to Mr. Kramer, and Mr. Kramer said that he had never heard the name of Lamar mentioned.

Mr. CARLIN. Who was it that had heard it?

Mr. KENDALL. Mr. Charles H. Canode.

Mr. CARLIN. He told you he understood Lamar got \$500,000?

Mr. KENDALL. No; he did not tell me that. That was the impression I got from talking to him. That was my supposition—that a man named Von Rintelen came over here with \$1,000,000 to instigate a movement to stop the export of munitions and the manufacture of munitions.

Mr. CARLIN. You say Mr. Canode is a member of the peace council?

Mr. KENDALL. No, sir; he was not.

Mr. CARLIN. You just stated you got the impression from members of the peace council. What members of the peace council?

Mr. KENDALL. For instance, John Fitzpatrick and E. N. Nockels. Fitzpatrick is a vice president of the Federation of Labor, and

Mr. Kramer was a vice president, and it had been a rumor—but where the rumor originated—

Mr. CARLIN (interposing). But you have just stated you got this impression from conversations with members of the peace council. My question is from what members of the peace council did you get this impression?

Mr. KENDALL. From Mr. Fitzpatrick and Mr. Kramer, and it may have been that I suggested that Lamar and Von Rintelen were backing the Labor Peace Council. The New York World and the Chicago Tribune had carried stories six or eight months previously that the German agents had come to this country and were buying up newspapers, and that they had attempted to buy some big news agency, like the Wheeler's Syndicate or the Wheeler News Agency and that they made overtures to the Associated Press head and various kinds of newspapers that were run—for instance, I know there was one in Chicago called the Irish Voice and another called the Fatherland in New York. They were all supposed to have been backed by German money.

Mr. CARLIN. Whose supposition was this?

Mr. KENDALL. That was my impression.

Mr. CARLIN. That was your supposition?

Mr. KENDALL. Yes, sir; and I got that supposition from gleaning various impressions from various people on various days, and not on one investigation.

Mr. CARLIN. Who were the members of the peace council that helped you get this impression that you referred to just now?

Mr. KENDALL. The only member of the peace council that I talked to long was Mr. Kramer.

Mr. CARLIN. He never gave you that information?

Mr. KENDALL. No, sir; he did not know anything about it, but he knew that somebody had been using the initial of "K"; that somebody would send a telegram to themselves in New York. Some one would send a telegram from Ithaca or Schenectady, "We have the boys at the plant already to strike, we will need \$10,000." Then those people would hurry back to New York and get the telegram this man had addressed to himself, and take it over to one of these men who was supposed to have been a German agent. Lamar—

Mr. CARLIN (interposing). When did you get this information from Mr. Kramer?

Mr. KENDALL. I did not get that information from Kramer. I asked Mr. Kramer about it, and he said, yes, even that was so, that somebody had done that.

Mr. CARLIN. From whom did you get that information?

Mr. KENDALL. I really can not tell you. I am trying to think, but I do not know whether I got that impression from some story I read in the paper. I read all of that that I could find around.

Mr. CARLIN. Your part of the three-column article is—

Mr. KENDALL (interrupting). Is just one column, the last one-third.

Mr. CARLIN. And all you had to base that column on was your conversation with Mr. Kramer and your own suppositions?

Mr. KENDALL. The previous information that I had secured.

Mr. CARLIN. Is Fitzpatrick a member of the peace council?

Mr. KENDALL. He was, but he got out, or he was going to get in it and then get out when Mr. Gompers told him that—or rather Mr.

Gompers objected or said it was wrong or sent out a warning for labor leaders not to get into it.

Mr. CARLIN. Where did you get that information?

Mr. KENDALL. I am not sure whether Mr. Fitzpatrick or Mr. Nockels told me, or whether either one, but some member of the Chicago Federation of Labor told me.

Mr. CARLIN. Who is Mr. Nockels?

Mr. KENDALL. He is secretary of the Federation of Labor at Chicago.

Mr. CARLIN. Where did you get the information that Fitzpatrick was a member of the Labor Peace Council?

Mr. KENDALL. I do not know whether he was a member, but I know that the Labor Peace Council was organized in his office.

Mr. CARLIN. Do you know who was present when it was organized?

Mr. KENDALL. I think Mr. Buchanan was. I was not there, but I go and ask and get these stories, and I have a thousand other and things and people to see, but I get that impression and go to the office and write it and forget it, so I can think of something else. I think Mr. Buchanan, Mr. Kramer, Mr. Fitzpatrick, Mr. Canode—and, by the way, Mr. Canode presided at one of the meetings, either the first or the second or third meeting—one of those three meetings, as chairman.

Mr. CARLIN. Do you know the date of that organization?

Mr. KENDALL. I do not know whether it was in June or not. There was a convention held in Washington.

Mr. CARLIN. What was the date of the meeting which you say Representative Buchanan attended at Fitzpatrick's office?

Mr. KENDALL. I had the impression that Mr. Buchanan attended. I do not know whether he did or not, and I do not recall the date.

Mr. CARLIN. You do not know whether he was there or not?

Mr. KENDALL. No, sir; I do not. I do not know whether the meeting was held there from my own knowledge. The city editor will say, "They are organizing a meeting," or somebody will telephone in and say, "Did you get that meeting of the Labor Peace Council?" They will say, "They have organized something," and I would sit down and write a story from that.

Mr. CARLIN. The committee will take a recess until half past 2. We will excuse you, Mr. Kendall, until that time.

(Thereupon, at 1.30 o'clock p. m., the committee took a recess until 2.30 o'clock p. m.)

AFTER RECESS.

The subcommittee met at 2.30 o'clock p. m., pursuant to the taking of recess.

STATEMENT OF BEN KENDALL—Resumed.

Mr. CARLIN. Mr. Kendall, did this article of December 29 come to you in the regular way—that is, were you regularly assigned by the city editor?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. There was nobody outside that talked to you about this matter?

Mr. KENDALL. No, sir.

Mr. CARLIN. You were not induced or persuaded by anybody else to write on this subject?

Mr. KENDALL. No, sir.

Mr. CARLIN. Mr. Kendall, with whom have you talked about this article other than Mr. Kramer?

Mr. KENDALL. How do you mean? Discussed the features or the phases of it, or do you mean since it was written?

Mr. CARLIN. I mean before and since.

Mr. KENDALL. Before I talked to no one except—this is the way: I will explain just how I got the story. I had information about the Labor's Peace Council, or had written stories on it and knew, or was supposed to know, some of the inside workings or how it would work, and when the news of the indictment came, why, the city editor told the assistant city editor to put me on it; that I was supposed to know something about it. That is why I went out. When I got the story I came in and told the city editor what I had on the story, and he said "Write it."

Mr. CARLIN. What was the date of the indictment?

Mr. KENDALL. It was the day the indictments were returned. You know the story is always written the day before it appears in the paper. If the date was the 29th, it was the 28th the indictment was returned.

Mr. CARLIN. Then the occasion for your writing this article was because of the fact that the indictment had been found?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. You probably would not have written the article but for that fact?

Mr. KENDALL. No, sir; I would have waited until they were returned. No, sir; there was no news value to it except for the fact that the indictments were returned.

Mr. CARLIN. You are sure you waited until the finding of the indictments was announced?

Mr. KENDALL. Yes, sir; until we learned it. I did not know it had been announced or whether it had been returned before a court or not.

Mr. CARLIN. Well, to whom did you talk about writing this article?

Mr. KENDALL. I talked to no one. The city editor simply told the assistant to put me on it; that I knew about it. When the story came in that the indictments were to be returned, or had been found, the assistant city editor told the city editor, and the city editor said put Kendall on it, because I was supposed to know about it. I was standing there when he said that. I was then working on some other story, but took this. If you put a man who is unfamiliar with the names and circumstances on a job, he has to go all over it again.

Mr. CARLIN. To whom did you talk about this particular article since?

Mr. KENDALL. I have never discussed this article with anyone since that I recall, because I could not remember just what article or just what date it was—because I have written a good number of them—until just now. Several days following the story, I met Mr. Canode. I met Mr. Canode and he happened to say, "You have got me a little wrong." He said, "You had me saying something that I did not say" or "You put words in my mouth." I said, "What was

it?" He told me what it was at the time. I remember telling him at the time that that was meant for someone else.

Mr. CARLIN. Who else was it mean for?

Mr. KENDALL. I do not exactly recall that now. I was supposed to have said that—I intended to quote that somebody said that Mr. Buchanan was threatening to spill the beans if they did not pay the bills of Labor's Peace Council. Those words were attributed to Mr. Canode, and I am almost sure Mr. Canode did not say them; that is, he told me he did not.

Mr. CARLIN. Are you sure anybody said that?

Mr. KENDALL. Yes, sir; I am sure someone told me that. It could not be Straube, because he was in San Francisco. The words I used were my own words, and that is due to the fact that if you use the other people's words, they do not fit in well and you have to trim them.

Mr. CARLIN. The only fact on which you had to write an article was the fact the indictment had been found. The balance of it seems to be on your own volition and imagination.

Mr. KENDALL. No, sir.

Mr. CARLIN. What other facts did you have?

Mr. KENDALL. None of it was written out of my imagination. The impression that I had—I was supposed to go out and get a story and come in and write it, so it would be readable and fairly intelligible and to convey the facts of the case. To print verbatim—

Mr. CARLIN. From where did you get the information that they sought to inspire strikes?

Mr. KENDALL. From the Government's charge and from the indictments returned—the Federal indictments.

Mr. CARLIN. Did you have a copy of the indictment before you when you wrote the article?

Mr. KENDALL. No, sir; I had the story from New York on what they had been indicted. I had heard three or four days before that the indictments were to be returned. I could not tell you where I heard that, but around in various places people would say, "Oh, well, they are going to indict those fellows."

Mr. CARLIN. You state in the local part that from two Government witnesses the Tribune has obtained the story of charges. Who were those witnesses?

Mr. KENDALL. Well—that I obtained what? A story? I will tell you. Mr. Kramer and Mr. Canode were the two men, but what was the last sentence?

Mr. CARLIN. From two Government witnesses—this is the paragraph—"The Tribune has obtained a story of charges made against Congressman Frank Buchanan and seven other men who were indicted as pro-German plotters by the New York grand jury."

Mr. KENDALL. Yes, sir.

Mr. CARLIN. How do you know they were indicted as pro-German plotters?

Mr. KENDALL. Well, that is a broad term that would take in—pro-German plotters would be men who spread propaganda or talked or whose actions would tend to do anything that would assist Germany in preventing shipments of munitions or the manufacture of munitions for the Allies.

Mr. CARLIN. Was there anything in the indictment charging them with any such offense?

Mr. KENDALL. No, sir; I do not know whether there was or not. There was something—I do not know what it was.

Mr. CARLIN. Why did you say that?

Mr. KENDALL. Well, at the time I knew—I do not mean to say I never knew—I did know then.

Mr. CARLIN. You could not know there was a charge of pro-German plotting when there was no indictment for any such offense.

Mr. KENDALL. They were indicted for something on that order. I do not recall the indictments. You might enlighten me on that, and I could then explain.

Mr. CARLIN. I find this in the article: "Soon Mr. Gompers announced he had evidence of the improper use of money to bring about labor troubles. He turned this evidence over to the Department of Justice." Where did you get that from?

Mr. KENDALL. Mr. Gompers told me that.

Mr. CARLIN. Mr. Gompers told you that?

Mr. KENDALL. Yes, sir; in Chicago, or words to that effect. That was months before. The information that I had, upon which I based that story, was information that I had gathered and just happened to run across, or had in my mind, and I connected it all up there. Then the president of the longshoremen's union—I forget his name—told me that he had a chance to get a million dollars.

Mr. CARLIN. Mr. Gompers?

Mr. KENDALL. No, sir; that was the president of the longshoremen's union. He turned over his evidence to the Federal grand jury and Mr. Gompers in Chicago in the Morrison Hotel——

Mr. CARLIN (interposing). You say you talked to Mr. Gompers a month before the article was published?

Mr. KENDALL. No, sir; it may have been June or July.

Mr. CARLIN. You say this, that it was largely upon his testimony, according to the reports from New York, that the indictments were returned. What reports did you have from New York to the effect that it was his testimony upon which the indictments were returned?

Mr. KENDALL. Mr. Gompers' testimony?

Mr. CARLIN. Yes.

Mr. KENDALL. I do not get the connection with the remainder of the story.

Mr. CARLIN. Here is the connection: "The department in turn called upon him (Mr. Gompers) to appear before the New York grand jury. This he did, and it was largely on his testimony, according to the reports"——

Mr. KENDALL (interposing). I do not think I wrote that.

Mr. CARLIN (continuing). "In New York that the indictments were returned."

Mr. KENDALL. Is that in my story?

Mr. CARLIN. That seems to be in the local story. There are five paragraphs, and the other has a Washington date line.

Mr. KENDALL. It has no caption at all and belongs under the same date line.

Mr. CARLIN. Then that story would have come from Washington?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. But you had the same information from Mr. Gompers himself, you say?

Mr. KENDALL. No; I talked to Mr. Gompers a long time before the Government started their investigation, or probably the Government had been investigating the matter, because Mr. Gompers warned the federation to withdraw, and I happened to meet him and ask him about it.

Mr. CARLIN. Did Mr. Gompers connect the name of Representative Buchanan with this?

Mr. KENDALL. No, sir.

Mr. CARLIN. Whose name did he connect with it?

Mr. KENDALL. He mentioned no one's name that I can recall. It was merely used to make the story stand up—the little connection that I talked to him, to make the story stand up.

Mr. CARLIN. You used him to make the story stand up?

Mr. KENDALL. I wanted to make a good readable story that people would believe.

Mr. CARLIN. You were afraid no one would believe it unless he appeared there.

Mr. KENDALL. No, sir; but that showed we had some authority for the statement, and it gave it some tone. He did not mention Mr. Buchanan's name.

Mr. CARLIN. Then, you did write this paragraph?

Mr. KENDALL. No, sir; I say, when he talked to me——

Mr. CARLIN (interposing). You say you put this in the story to make it stand up?

Mr. KENDALL. When I talked to Mr. Gompers sometime before, I say, I had talked to him, and he told me that he had withdrawn from the federation. Now, I do not think that is in the story.

Mr. CARLIN. Didn't you just state that you put that in the story to make it stand up?

Mr. KENDALL. I did not put it in that story.

Mr. CARLIN. What story?

Mr. KENDALL. I did not put it in any story.

Mr. CARLIN. What story did you mean it had to be put in to make it stand up?

Mr. KENDALL. I do not know that I—now, I do not want to evade any question or anything seeming to be an evasion.

Mr. CARLIN. What story did you put it in?

Mr. KENDALL. I do not think I put it in any story.

Mr. CARLIN. Didn't you just state you put it in to make the story stand up?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. What story did you put it in?

Mr. KENDALL. I did not put it in any.

Mr. CARLIN. Then why did you state that?

Mr. KENDALL. The files of the Tribune will show I wrote dozens of columns about it—about Mr. Gompers and the Labor's Peace Council, and you have one story there. I have written dozens of stories about the same thing. I have written over all the stuff that appears in the stories. I have written the substance of it from the Chicago angle, and Mr. Gompers told me one time he withdrew, and you asked when he told me that, and I said some time around July or August that he told me. I did write that at the time he withdrew.

Mr. CARLIN. Withdrew from what?

Mr. KENDALL. Samuel Gompers did warn the labor leaders of Chicago to withdraw from the Labor's Peace Council. The date when that article appeared I do not know. I have not yet read that whole story of December 29.

Mr. CARLIN. One of the things we are trying to ascertain is whether or not the office of H. Snowden Marshall, of New York, the district attorney, had anything to do with inspiring you, or with aiding or inducing you to publish this article.

Mr. KENDALL. No, sir; none whatever; none whatever. I never heard his name until the impeachment proceedings were started by Mr. Buchanan.

Mr. NELSON. As far as you know, or as far as you recollect any conversation you had with any labor leaders in Chicago, you have not heard anything to the discredit of Mr. Buchanan, have you?

Mr. KENDALL. No, sir; I have always heard every one of them state that he was above reproach. I have never found any labor leader in Chicago who did not say he thought he was all right.

Mr. NELSON. Has any information come to you in your careful study of this whole subject—and you say you have written very frequently concerning it—which in any way connected Mr. Buchanan with any of this fomenting of strikes, etc.?

Mr. KENDALL. All of my information is mostly second-hand and third-hand information that I get. And I have no information and would not have any evidence of his being associated with anything of that kind, and all that I get is information and the inferences that I draw.

Mr. NELSON. I know it is merely hearsay, but in this hearsay have you come upon any clue which you could suggest to the committee which we could pursue that would indicate that Mr. Buchanan had been connected with this fomenting of strikes?

Mr. KENDALL. No, sir; not unless you get the evidence presented before the grand jury.

Mr. NELSON. I mean from your own investigations. Have you come upon any such clue?

Mr. KENDALL. No, sir; I learned that the Government had information, or could show telegrams to various meetings, held between various people, and I figured if they had that evidence, that the evidence was there, and if it came to a pinch that the evidence could be produced if demanded to prove the statements in the story.

Mr. NELSON. In the article you connected Buchanan's name with it, and my purpose is that I want to find out what facts came to your attention which justified the representation that he was one of the active leaders in fomenting strikes, etc.

Mr. KENDALL. He was an active organizer. He was not an officer of the Labor's Peace Council, I do not think.

Mr. NELSON. At that time?

Mr. KENDALL. At any time, I do not think.

Mr. NELSON. Buchanan was not?

Mr. KENDALL. Yes, sir. I am not sure, but I do not think he was, and he was an organizer and was paying money, or was seeing that money was being paid, for office rent, and various things like that.

Mr. NELSON. It is a fact, is it not, that you were writing up the report, and in this report you had made reference to this peace council

and had talked with Gompers months before, and with other people, and when you wrote this article you took what little you knew, and the rest you summed up in this article and made it a readable story?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. Mr. Kendall, you said you were familiar with the working of the peace council and knew a great deal about it.

Mr. KENDALL. Not the peace council. If I said that, I meant the alleged operations of people who were supposed to be using the Labor's Peace Council to foment strikes.

Mr. CARLIN. What people were those?

Mr. KENDALL. I believe German agents and German money, or whatever other powers there might be—

Mr. CARLIN (interposing). You said you had a great deal of information. What information have you?

Mr. KENDALL. Well, the fact that there were times when strikes were called, and the labor leaders were not calling strikes in various parts of the country, and that the Labor Peace Council—and I never found out anything that causes me to believe the Labor Peace Council connected itself with the strikes—but Mr. Kramer and those told me they were trying to prevent strikes.

Mr. CARLIN. You said that people were using the peace council—

Mr. KENDALL (interposing). Yes, sir; that was my assumption or presumption.

Mr. CARLIN. Your assumption or presumption was that the peace council was being used by somebody else?

Mr. KENDALL. Yes, sir; that when a strike was called that somebody would go to the men supposed to have the matter in control, and say, "We have a big strike on at Gary; the Labor Peace Council boys have just started a lot of trouble in Gary and we will need \$10,000 more to keep up the work," and whoever that man was was getting the money.

Mr. CARLIN. When was this trouble you speak of?

Mr. KENDALL. I used "Gary" as an illustration. Ithaca or Schenectady or Ilion would do. I believe also there were telegrams sent. I do not know whether they were addressed to Buchanan or not, but one said, "I understand" and was signed "K" alone. There were several other labor leaders who attended meetings, whose names started with "K," like Kramer, or some others that I do not recall now.

Mr. CARLIN. Did you interview anybody except Kramer who was before the grand jury in New York?

Mr. KENDALL. Mr. Canode.

Mr. CARLIN. Who?

Mr. KENDALL. Mr. Canode. I do not know whether he was before the grand jury or not. He was called to New York.

Mr. CARLIN. Anybody else?

Mr. KENDALL. Mr. Straube. He was called, but I do not think he got there in time. I asked all they knew, and I knew if I could get all they knew about it, I would get all the grand jury had gotten from them, and in that way I would get the same as the grand jury; that is, if they would tell me the truth, and tell me the same thing.

Mr. CARLIN. But you did not get it, I see?

Mr. KENDALL. Yes, sir; I do not understand what you mean.

Mr. CARLIN. You did not get what the grand jury got, did you?

Mr. KENDALL. I do not know whether I did or not.

Mr. CARLIN. How could you get what the grand jury got from people who did not go before the grand jury?

Mr. KENDALL. These men were called. I assumed the grand jury wanted to know what they knew.

Mr. CARLIN. Didn't you just say one of them got there too late to testify?

Mr. KENDALL. I did not mention anything about the grand jury. We never do that. We do not mention the evidence given before the grand jury.

Mr. CARLIN. I am not talking about what you mentioned in the article, but didn't you just suggest that Mr. Straube got to New York too late to testify?

Mr. KENDALL. Yes, sir; the grand jury was not in session.

Mr. CARLIN. How did you happen to get from him, then, what occurred before the grand jury, if he was not before the grand jury?

Mr. KENDALL. No, sir; I would not get what occurred before the grand jury, and if we did, we would not print it anyhow.

Mr. CARLIN. Why not?

Mr. KENDALL. Well, that is the rule that the Tribune follows, that we do not print information given before any grand jury. We never state that fact, anyway.

Mr. CARLIN. Does not this very article purport to give what happened before the grand jury?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. You did print it, then, in this article?

Mr. KENDALL. I did not mention anything about the grand jury. I did not mention that that was the information which the grand jury got.

Mr. CARLIN. Now, to be frank about this, you were guessing?

Mr. KENDALL. No, sir; I got that information honestly and wrote it conscientiously, as I thought the facts would bear out—that the evidence that the grand jury had would bear out those facts.

Mr. CARLIN. That is what you thought about it?

Mr. KENDALL. I still think it would.

Mr. CARLIN. Do you know what evidence the grand jury had?

Mr. KENDALL. No, sir; I do not.

Mr. CARLIN. Are you not simply guessing when you say you think it would?

Mr. KENDALL. No, sir; it would be circumstantial evidence purely on my part.

Mr. CARLIN. Circumstantial evidence on your part, which would lead you to conclude affirmatively what was the real evidence before the grand jury?

Mr. KENDALL. No, sir; I would gather the circumstantial evidence, and the story was my opinion after looking over the evidence—various circumstances, various meetings, and various resignations of men on that peace council.

Mr. CARLIN. Now, this is all you know about the matter, Mr. Kendall?

Mr. KENDALL. It is all I can think of at present. If I could read all those stories over that I wrote—go down into the library and look them up—around December 6, there were some stories—December 6, 7, 8, and 9.

Mr. CARLIN. Well, unless some one wants to ask some questions, you will be excused.

The CHAIRMAN. I should like to ask a question or two. Is your paper a very strong ally paper, German paper, or neutral?

Mr. KENDALL. I do not know that. I do not know anything about the policy of the paper. The only thing I am concerned with is news, whether it hurts the allies or Germans, or who. If there is a news story in it, I get it and write it, and if it is printed or not printed it does not concern me.

The CHAIRMAN. You have not been instructed, then, to get up anything sensational or spectacular against the Germans and in favor of the allies?

Mr. KENDALL. No, sir; nobody ever receives any instructions as to how he is to write his story. The city editor merely says, "So and so has happened," and they hire reporters who are supposed to know enough to get the story and come in and say, "I have got it." The city editor then says, "Write it your own way."

The CHAIRMAN. You can not tell whether the Tribune is sympathetic to the German or to the allies?

Mr. KENDALL. It is not either way.

The CHAIRMAN. It is neutral?

Mr. KENDALL. I do not know about that.

The CHAIRMAN. If it is not pro-German or pro-ally, I imagine the only other position it could take would be that of a neutral.

Mr. KENDALL. I can not enter into a controversy about that. The policy of the paper is determined way up above me. I am merely a reporter.

The CHAIRMAN. That is all I care to ask.

Mr. CARLIN. You say you talked with Charles H. Canode?

Mr. KENDALL. Yes, sir.

Mr. CARLIN. I read you a letter that Mr. Canode wrote, dated Chicago, Ill., January 7, 1916, and I will ask you what you think about this:

I am in receipt of your letter of January 6, relative to the interview in the Chicago Tribune recently, and in which article the reporter is purported to have quoted me. I wish to say the supposed interview is absolutely without foundation of fact. The article states that Mr. Buchanan said he would "spill the beans if Martin failed to pay my bill," which is absolutely false.

The article further states that I. J. Cundiff was hired to organize strikes, whereas I specifically stated that Mr. Cundiff was hired for the purpose of organizing local councils for Labor's National Peace Council.

Furthermore, it states that this supposed interview was practically what I testified to before the grand jury while in New York, while as a matter of fact I could not have made that statement for the reason that I did not testify before the grand jury in New York.

A day or two after the article appeared the reporter responsible for it called at my office in my absence and asked my stenographer if I had made any comment on the article, and on my stenographer answering that she did not know, and that he would have to talk to me about it, he then said he just wanted to know whether I had done any swearing after having read the article.

The comment which wound up this interview relative to Mr. Buchanan is all false. I never stated that to the reporter or anyone else and do not know why this statement should have been credited to me.

I called Mr. Kendall, the Tribune reporter, over the phone to-day and he said that statement about "spilling the beans" was all a mistake and that the other statements attributed to me were mistakes in the make-up of the paper and no opportunity was given him to correct it. This last statement from Mr. Kendall may be taken for what it is worth, but I want it understood that there is absolutely no basis for them attributing those statements to me.

On the other hand, if the persons responsible for the bills incurred by Labor's National Peace Council had kept their word and paid their bills, there would have been no occasion for anyone drawing me into this controversy.

What have you to say about that?

Mr. KENDALL. Mr. Canode is making rather broad statements about the first paragraph, where he states there is no foundation of fact. I might recall one conversation, and Mr. Buchanan can say whether it ever occurred or not, whether Mr. Canode ever asked him about the \$500 printing bill that Mr. Martin and Mr. Buchanan had run up at Canode's printing company, and Mr. Canode went to Mr. Buchanan and asked him who was going to pay the bill, and he said Martin will pay it, or "they" will pay it. Mr. Canode then went to Mr. Martin and asked Mr. Martin about it, and Mr. Martin said he knew nothing about it. Then Mr. Canode went back to Mr. Buchanan, and Mr. Buchanan said, "I will see that they pay it."

Mr. NELSON. You knew at the time that Mr. Buchanan was not an officer then; that he had resigned?

Mr. KENDALL. I was under the impression he was not a member. He may have been.

Mr. NELSON. Who told you Mr. Buchanan said Martin would pay the bill?

Mr. KENDALL. I said "Martin" or "they."

Mr. NELSON. Who told you that?

Mr. KENDALL. I say Mr. Canode.

Mr. NELSON. You do not know whether it was "Martin" or "they"?

Mr. KENDALL. Yes, sir.

Mr. NELSON. What did you understand they meant by "they"?

Mr. KENDALL. Well, Mr. Martin and Mr. Fowler. They are the ones I thought. They were the leaders, and the other men were drawing salaries, except the vice presidents. The vice presidents of the organization had no money, and they were selected employees of the labor unions. Mr. Straube was secretary of the Labor's Peace Council, and his daughter was his secretary or stenographer. They did not get their pay and somebody had to pay the bills. I knew somebody had guaranteed to Canode that the bills would be paid or he would not have printed them.

Mr. NELSON. Did you know Mr. Straube was the business manager of the organization?

Mr. KENDALL. I just knew he had some office; that he drew \$50 a week, I believe.

Mr. NELSON. What do you mean by this statement in your article: "I. J. Cundiff was hired to organize strikes?"

Mr. KENDALL. That was the presumption he was hired, according to Mr. Kramer and the Labor Peace Council.

Mr. NELSON. Why didn't you state in this article that the writer presumed that?

Mr. KENDALL. I want to say this: I believed that those were the facts, and the facts will bear this out, that this man was hired according to the laws of the peace council to organize the peace council, but he was representing some one who they always speak of as trying to find, who was acting as the go-between of the labor council and the German agents.

Mr. NELSON. Who was the man?

Mr. KENDALL. I have no idea.

Mr. NELSON. You were supposing practically everything else, why didn't you suppose that?

Mr. KENDALL. I had not been supposing everything else.

Mr. NELSON. You supposed that Cundiff was hired to do that.

Mr. KENDALL. He was hired, according to the Labor's Peace Council—he was hired to organize the Labor's Peace Council, and Cundiff was supposed to be employed by the German agents—by the go-between.

Mr. NELSON. Whose supposition was that?

Mr. KENDALL. I understood that the Federal grand jury had a telegram, which had been written to Cundiff, in which Cundiff was sent to Ilion or Ithaca, N. Y., because there was some trouble down there and there was some kind of strike trouble threatened, and Cundiff went there and wired to New York. I do not know whether it was to Mr. Buchanan or not. I can not recall now.

Mr. NELSON. When was that he went there?

Mr. KENDALL. I do not know when it was when I got that information. He went down there, but for what purpose I do not know. He sent a wire back and said, "The strike is all settled."

Mr. NELSON. Now, let us get down to plain questions and simple answers. You said, in your article that I. J. Cundiff was hired to organize strikes. Now, who is responsible for that statement?

Mr. KENDALL. I am.

Mr. NELSON. Upon what authority did you make it?

Mr. KENDALL. On this, that he went to New York and sent a wire—went to Ilion or Ithaca, I forget the name of the town—because there was some trouble threatened. He wired to New York, "The trouble is settled; they have gone back to work," and he received an answer which said, "How much money will you need?" He wired back, "I will need no money," and I got that impression that he went down there for that purpose. I also said in the story there that he was considered an honest man and believed to be an honest man. He was a machinist. He had a good reputation. He thought he was hired to organize the peace council. That article is no reflection upon him, because Canode said that Cundiff was a straightforward man. As soon as Cundiff received the wire back, "How much do you need?" it was my presumption that he was there to organize a strike.

Mr. NELSON. Where did you get the facts about the telegram?

Mr. KENDALL. I do not really know, but I do know that I asked Mr. Kramer if he had been shown—that is the way we do that; when we know a man and want to learn something from him, we ask him directly—I said to Mr. Kramer, "Mr. Kramer, did they show you the books of the Labor's Peace Council where a whole page had been torn out and another substituted, in which President Wilson was criticized and was condemned," and he said "Yes." That fact was caused by the Labor's Peace Council meeting at Washington, where they adopted resolutions, and some one attempted to criticize President Wilson and called him a traitor or something like that. They would not stand for it—the Labor's Peace Council convention would not stand for that—and adopted some other resolutions, and threw those out, and later on they discovered in the books that these resolutions condemning the President were down in the minutes of the books in L. B. Straube's handwriting. He was supposed to take the minutes of the meeting in his book. I asked Mr. Kramer if he heard those resolu-

tions adopted and he said, "No." I asked if they showed a letter written by Congressman Buchanan. I had no idea whether there were any letters written or not. I was simply stabbing in the dark. I said, "Did they show you a letter written from Congressman Buchanan to Frank Smith, or some other letter?" He said, "No." I said "Did you see any letter supposed to be written to him?" He said "No," and I said, "Did they show you any telegrams," and he said "Yes." I do not recall who they were addressed to. He remembered a telegram signed "K."

Mr. NELSON. To boil this down, all the information upon which you wrote this article you received from Mr. Kramer?

Mr. KENDALL. No, sir.

Mr. NELSON. Plus your own surmises?

Mr. KENDALL. No, sir; I simply used Mr. Kramer to see if my suspicions had any foundation or basis in fact.

Mr. NELSON. And he confirmed your suspicions?

Mr. KENDALL. No, sir; he would not talk, except to say "Yes." He told me he could not reveal what the grand jury told him.

Mr. NELSON. Did he confirm your suspicions?

Mr. KENDALL. Yes, sir; I could tell from his demeanor whether it was confirmatory or negative. It was not necessary to state in words "yes" or "no."

Mr. NELSON. After you had your suspicions confirmed in this interview, you wrote your suspicions in the article?

Mr. KENDALL. I wrote my impressions in the article.

Mr. NELSON. Your impressions?

Mr. KENDALL. Yes, sir.

Mr. NELSON. Did you ever say over the telephone that you were not responsible for this article?

Mr. KENDALL. No, sir; I am responsible. In reference to some one calling up the stenographer, I would say that is not me. It may have been a reporter that followed up. I write a story and get a new one, and some other reporter takes it up, and he is known as the follow-up reporter.

Mr. CARLIN. How old are you?

Mr. KENDALL. Twenty-five next April.

Mr. CARLIN. How long have you been on the Tribune?

Mr. KENDALL. About four years. Then I worked on a newspaper in Louisville, Ky., about three and a half years, and worked on the Chicago Inter-ocean about seven months.

Mr. NELSON. The function of the reporter has got to be this: You must have a bright imagination and go around and find some public man that will stand for it.

Mr. KENDALL. No, sir; far from it. A reporter can not have an imagination. If the newspapers printed the truth and all the truth there would not be—there would be a whole lot more furore than there is about all kinds of things, if we printed our suspicions and imaginations.

Mr. CARLIN. Then you do not publish all the truth?

Mr. KENDALL. For instance, if we printed speeches as men made a speech, or as a man made it, the people would laugh themselves sick about it.

Mr. CARLIN. The reason you do not publish it, you do not want them to become ill?

Mr. KENDALL. We dress it up in readable language, or attempt to. A big court trial—you would not print the proceedings of the court trial. It would take two months to read it.

Mr. CARLIN. I judge from your statement you consider a reporter a preserver of the public health.

Mr. KENDALL. No, sir; I do not have a very high opinion of reporters myself.

Mr. CARLIN. You do not?

Mr. KENDALL. No, sir.

Mr. CARLIN. Why is that?

Mr. KENDALL. I know it is a poor business.

Mr. CARLIN. Why?

Mr. KENDALL. I mean for a reporter for himself. He gets nothing out of it himself.

Mr. CARLIN. He gets abuse?

Mr. KENDALL. He gets that all the time. He is never welcome and always glad when they leave.

Mr. CARLIN. We will excuse you now.

Mr. KENDALL. Thank you.

STATEMENT OF MILTON SNELLINGS, FIRST VICE PRESIDENT OF THE ENGINEERS' INTERNATIONAL UNION.

Mr. CARLIN. Please give your name, address, and occupation to the stenographer.

Mr. SNELLINGS. Milton Snellings, 823 D. Street SW., Washington, D. C.

Mr. CARLIN. Are you connected with any labor organization?

Mr. SNELLINGS. I am first vice president of the Engineers' International Union.

Mr. CARLIN. The Engineers' International Union?

Mr. SNELLINGS. Yes, sir.

Mr. CARLIN. Were you a witness before the grand jury in New York in the matter of the indictment against Buchanan and others?

Mr. SNELLINGS. Yes, sir.

Mr. CARLIN. Did you go before the grand jury?

Mr. SNELLINGS. Yes, sir.

Mr. CARLIN. Did you have any conversation with H. Snowden Marshall, district attorney, before you went there?

Mr. SNELLINGS. No, sir; I do not know him.

Mr. CARLIN. Did you have any conversation with him afterwards?

Mr. SNELLINGS. No, sir.

Mr. CARLIN. Did you have any conversation with any of his subordinates?

Mr. SNELLINGS. I met Mr. Sarfaty.

Mr. CARLIN. How did you come to meet him?

Mr. SNELLINGS. I was subpoenaed here, and when I arrived in New York I went to the Federal building and reported, and was referred to Mr. Sarfaty's office. He told me to appear before the grand jury that day at 2.30.

Mr. CARLIN. What day did you appear there?

Mr. SNELLINGS. Monday, the 20th of December. I do not know the date exactly, but I think it was Monday.

Mr. CARLIN. Do you know why you were summoned as a witness?

Mr. SNELLINGS. No, sir; I did not inquire into that.

Mr. CARLIN. Did any special officer of the Government or any officer of the Government talk with you about the matter?

Mr. SNELLINGS. No; not before that matter. There was an agent—I suppose you refer to Labor's National Peace Council—there was an agent of the Department of Justice called on me along in—possibly it was in August or September. It might have been August, but I do not know the date.

Mr. CARLIN. About what?

Mr. SNELLINGS. About my former connection with Labor's National Peace Council.

Mr. CARLIN. What was your former connection?

Mr. SNELLINGS. I was first vice president at one time.

Mr. CARLIN. When were you elected first vice president?

Mr. SNELLINGS. At the meeting held at Washington, the 21st or 22d of June, as near as I can remember the dates.

Mr. CARLIN. When did you sever your connection with it?

Mr. SNELLINGS. I believe it was the 29th of July—the 28th or the 29th.

Mr. CARLIN. Why did you sever your connection with it?

Mr. SNELLINGS. Well, I did not like it. I did not feel it was a proper place for me.

Mr. CARLIN. Why didn't you like it?

Mr. SNELLINGS. I did not have any—oh, I will tell you—I did not have confidence in some of the people who were members of it.

Mr. CARLIN. Just what do you mean by saying you did not have confidence in some of the people who were members?

Mr. SNELLINGS. Well, there were some people active in the organization that I did not have any confidence in. I did not believe in them. I did not believe they were sincere in what they were pretending to do.

Mr. CARLIN. What people?

Mr. SNELLINGS. Herman Schulteis, Henry B. Martin—they were two of them.

Mr. CARLIN. Who else?

Mr. SNELLINGS. Well, a lot of men I do not know, whom I had not met before.

Mr. CARLIN. Do you know their names?

Mr. SNELLINGS. Yes, sir; there was one man by the name of Straube in Chicago. He was expelled from his international union, and I thought, from the circumstances, it could not be much of a labor affair.

Mr. CARLIN. Have you any reason to believe that the motives of those gentlemen were otherwise than what they pretended—to bring about international peace?

Mr. SNELLINGS. Yes, sir; I felt that the motive behind the whole organization was not proper.

Mr. CARLIN. What did you feel the motive behind it was?

Mr. SNELLINGS. From words I had heard dropped and actions of some of its members, I felt that the organization was intended to assist one of the powers at war in Europe against the others.

Mr. CARLIN. Did you feel that labor—that the effort was to use labor organizations with that end in view?

Mr. SNELLINGS. I felt that the effort was to be made to do it in the name of labor, at least.

Mr. CARLIN. Did you have any facts upon which to base that belief?

Mr. SNELLINGS. Yes; I heard Mr. Taylor, of New Jersey, who was acting as secretary of that meeting—as one of the secretaries—say to Mr. Lorch, who was in attendance, that the object was to stop all shipments of arms or munitions of war to the allies; that Germany could manufacture all she wanted.

Mr. CARLIN. Did you receive a salary from that organization?

Mr. SNELLINGS. Yes, sir.

Mr. CARLIN. As vice president?

Mr. SNELLINGS. Yes, sir.

Mr. CARLIN. What was your salary?

Mr. SNELLINGS. Sir?

Mr. CARLIN. How much was your salary?

Mr. CARLIN. Did I receive a salary from that organization?

Mr. CARLIN. Yes.

Mr. SNELLINGS. No; I thought you referred to the organization I am connected with.

Mr. CARLIN. Were you ever promised any salary?

Mr. SNELLINGS. No, sir; I never was.

Mr. CARLIN. Anyone connected with Mr. Marshall's office, either by inducement, persuasion, or threat, secure your attendance and testimony before the grand jury?

Mr. SNELLINGS. No, sir; I never knew anything about it; I was out in California, and did not arrive here until the 18th of December, I believe it was, and so I was subpoenaed when I got home. The deputy marshal was sent to my house a number of times looking for me, and I was not in.

Mr. CARLIN. What do you know of the connection of Martin and Lamar with this peace organization?

Mr. SNELLINGS. I do not know anything about it. I never knew Lamar had any connection until I heard he was indicted. Martin was very active in the meeting I attended here, where the organization was supposed to be perfected.

Mr. CARLIN. He was very active?

Mr. SNELLINGS. Yes, sir.

Mr. CARLIN. In the way of the election of officers?

Mr. SNELLINGS. Oh, he was very talkative, and made several speeches, and seemed very anxious to have his views agreed with.

Mr. CARLIN. Is he connected with organized labor?

Mr. SNELLINGS. Not that I know of.

Mr. CARLIN. When you went before the grand jury in New York, who was in the jury room except the jury?

Mr. SNELLINGS. Mr. Sarfaty is the only one I know. There was some gentleman sitting at the table. I do not know who he was. It was the first time I had appeared before a grand jury. I do not know how many people ought to be there.

Mr. CARLIN. Was there a stenographer also present?

Mr. SNELLINGS. Yes, sir.

Mr. GARD. Was there any effort or attempt made to influence your testimony in any way, or when you were in conference with Mr. Sarfaty?

Mr. SNELLINGS. No; that conversation with Mr. Sarfaty was very short. He was late getting to his office, as I understood it, and I went in and requested him to let me testify as soon as possible, because I wanted to leave New York. He said he would get me on that afternoon and to come back at 2.30. A few other words passed, of no importance.

Mr. CARLIN. You did testify on that occasion in the afternoon?

Mr. SNELLINGS. Yes, sir; at 2.30.

Mr. GARD. Did you return to Washington on the same evening?

Mr. SNELLINGS. No, sir; after testifying, I found I had other business there and I stayed there several days—working for my organization.

Mr. GARD. There was no attempt at coercion, by threatening you with imprisonment, or anything of that kind?

Mr. SNELLINGS. No, sir.

Mr. GARD. I understand you never did, as far as your present knowledge is concerned, meet H. Snowden Marshall, United States district attorney?

Mr. SNELLINGS. No, sir.

Mr. CARLIN. I understood you to say that you reached the conclusion that the Labor Peace Council was being used to aid the German propaganda in this country?

Mr. SNELLINGS. I felt that way about it.

Mr. CARLIN. And that is the reason you got out, because of—

Mr. SNELLINGS. I felt that it was not going to be used for the purposes I first understood it to be.

Mr. NELSON. When did you join the peace council?

Mr. SNELLINGS. I think it was the 21st of June, at the date the meeting was held here.

Mr. NELSON. When did you resign?

Mr. SNELLINGS. I think the resignation went in on the 29th of July.

Mr. NELSON. After or before Mr. Buchanan resigned?

Mr. SNELLINGS. Before he resigned—before I had heard of his resignation.

Mr. NELSON. Why did you join?

Mr. SNELLINGS. Well, a committee—not a committee, but a lot of gentlemen, Mr. Buchanan, Mr. Straube, Mr. Fowler, Mr. Schulteis, and several others, on the evening previous, which, I think, was the 20th of June—visited the Washington Central Labor Union. I was present and they addressed the body on that subject.

Mr. NELSON. The purposes of the peace council, as you understood it, was what—I mean when you joined?

Mr. SNELLINGS. It was to use whatever efforts we could to bring about universal peace.

Mr. NELSON. There were two motives set forth in the literature which you sent out: One was to promote peace, and the second was to agitate against the sale of munitions of war?

Mr. SNELLINGS. No literature of mine.

Mr. NELSON. Didn't you participate in sending out the literature of the peace council?

Mr. SNELLINGS. No, sir.

Mr. NELSON. Have you not read the documents sent out by the peace council?

Mr. SNELLINGS. I read some of them. I do not know that I have read them all. I did not have any dealings with the peace council after that meeting. I never took part in any of the work.

Mr. NELSON. Didn't you know that they proposed to participate in the matter of the sale of munitions abroad?

Mr. SNELLINGS. Yes, sir.

Mr. NELSON. When you said what you said a moment ago, about improper motives, you do not mean to say that you ascertained that they were going beyond mere agitation against the sale of munitions abroad?

Mr. SNELLINGS. I thought the motive was beyond that.

Mr. NELSON. What? That they were going to foment strikes against it?

Mr. SNELLINGS. No, sir; I never heard that.

Mr. NELSON. You were opposed, then, to the preventing of the sale of munitions abroad?

Mr. SNELLINGS. I was opposed to preventing the sale of munitions to any power of Europe and allowing the other fellow, as they stated—

Mr. NELSON. I will give you a concrete example: There are Members of Congress who introduced resolutions to prohibit the sale of munitions to any country—an embargo—

Mr. SNELLINGS. Yes, sir.

Mr. NELSON. Now, what did Mr. Taylor say that suggested they were going beyond agitation along that line?

Mr. SNELLINGS. He did not suggest it to me. He was in conversation with Mr. Lorch and I overheard it. Mr. Lorch told me afterwards.

Mr. NELSON. Well, supposing you heard it; what did they say which seemed to go beyond being opposed to our country selling munitions abroad?

Mr. SNELLINGS. Mr. Taylor's remarks to Mr. Lorch were, "We want to stop the shipments to the allies; you see, Germany can manufacture all she wants."

Mr. NELSON. What do you know of any thought or fact that was accomplished beyond merely the statement that you have made?

Mr. SNELLINGS. I do not know of any positive thing that was done.

Mr. NELSON. Well, I say it is probable that Mr. Taylor simply had in mind the general idea that he wished to stop the sale of munitions to the allies—I mean in a lawful way, by agitation or legislation?

Mr. SNELLINGS. I only have to judge what Mr. Taylor had in his mind by what he said.

Mr. NELSON. Did he say more than what you have said?

Mr. SNELLINGS. That is all I heard him say.

Mr. NELSON. Have you any recollection of anything he said along that line which indicated they were going beyond the mere stirring up of public sentiment?

Mr. SNELLINGS. No; nothing more from Mr. Taylor.

Mr. NELSON. Or from anyone else?

Mr. SNELLINGS. No, sir; only it was my impression that the thing was not all right.

Mr. NELSON. That may be that you merely had sympathies for the allies and you did not want their supply of ammunition stopped?

Mr. SNELLINGS. I have a sympathy for all of them.

Mr. NELSON. I know; but here is the impression I got from what you testified to: That you had an impression that they were actually engaged in an active way in trying to prevent the sale of munitions.

Mr. SNELLINGS. I do not know what they did.

Mr. NELSON. That is the only thing you had in mind—that statement of Mr. Taylor's to Mr. Lorch?

Mr. SNELLINGS. That was not all I had in mind, but that would have been sufficient.

Mr. NELSON. To create an impression in your mind?

Mr. SNELLINGS. Yes, sir.

Mr. NELSON. That occurred at what time?

Mr. SNELLINGS. At the meeting at the St. James Hotel.

Mr. NELSON. What meeting?

Mr. SNELLINGS. There was only one meeting.

Mr. NELSON. Had Mr. Buchanan resigned?

Mr. SNELLINGS. No, sir; that was the time we perfected the organization.

Mr. NELSON. That was the beginning?

Mr. SNELLINGS. Yes, sir; I had no other dealings with it after that.

Mr. NELSON. Do you know of any act of the peace council which came within your knowledge which revealed the fact that this peace council was taking sides either way—either for or against the allies?

Mr. SNELLINGS. No, sir; that is all I know; that remark is all I know.

Mr. GARD. When did you resign as a member of the Labor's Peace Council?

Mr. SNELLINGS. I think the resignation went in on the 29th of July.

Mr. GARD. I am asked to inquire of you if you do not know that there was a resolution passed opposing traffic in war munitions on June 22?

Mr. SNELLINGS. Yes, sir; I was present at that meeting.

Mr. GARD. Is that the meeting to which you referred?

Mr. SNELLINGS. Yes, sir.

Mr. GARD. Was that the organization meeting?

Mr. SNELLINGS. Yes, sir.

Mr. GARD. Do you think that is the only meeting you attended?

Mr. SNELLINGS. That is the only meeting; yes, sir.

Mr. GARD. That is all.

STATEMENT OF A. BRUCE BIELASKI, CHIEF OF THE BUREAU OF INVESTIGATIONS OF THE DEPARTMENT OF JUSTICE.

Mr. CARLIN. Give your name and occupation to the stenographer, please.

Mr. BIELASKI. A. Bruce Bielaski, Chevy Chase, Md., Chief of the Division of Investigations, Department of Justice.

Mr. CARLIN. Mr. Bielaski, are you familiar with an organization known as Labor's Peace Council?

Mr. BIELASKI. Yes, sir; somewhat.

Mr. CARLIN. Were you a witness before the grand jury which found the indictments against certain officers of Labor's Peace Council?

Mr. BIELASKI. I was not.

Mr. CARLIN. Did your duties as special officer of the Government bring you in contact with the investigation of that matter?

Mr. BIELASKI. Yes, sir.

Mr. CARLIN. You, of course, are familiar with the witnesses who testified before the grand jury in the matter of that council?

Mr. BIELASKI. To a very considerable extent; yes, sir.

Mr. CARLIN. Do you know the names of the witnesses?

Mr. BIELASKI. I know the names of quite a number of them.

Mr. CARLIN. Can you give us those whom you can recall?

Mr. BIELASKI (after a pause). I am not especially thinking of the names of the witnesses, but of the Attorney General's instructions.

Mr. CARLIN. Thinking of what?

Mr. BIELASKI. Well, he wanted me to be very careful in what I said in respect to any pending litigation in cases not yet determined in the courts—criminal cases. I do not know of any reason why I should not answer that question to the best of my ability. The witnesses in that case are hard to separate from the witnesses in the case out of which it grew, the case of the United States *v.* Franz Rintelen, and Andrew D. Malloy, of which possibly I might give a brief statement, so you can understand the whole situation.

Capt. Franz Rintelen was one of the managing directors of one of the largest banks in Germany, a very prominent German banker of education and some wealth, who was an officer in the German naval reserves and at the outbreak of the war, he left his duties in the bank and became a captain on the staff of Admiral von Tirpitz. He was sent to this country in April, 1915, for the purpose, we have learned, of preventing the exportation of munitions of war to the allies and to arrange for the getting into Germany of such supplies as Germany needed. In the accomplishment of his purpose he came to this country under the name of E. V. Gasché, holding a Swiss passport.

Mr. GARD. This Rintelen came in under a Swiss passport?

Mr. BIELASKI. Yes.

Mr. GARD. And under an assumed name?

Mr. BIELASKI. Under the assumed name of E. V. Gasché. He first came to the attention of the Government authorities by reason of his very anti-American talk—his criticism of the administration and of the position of this country through a woman whom he had entertained, and who thought his utterances dangerous to this country. In that manner we began an investigation to see who he was and what he was. In a short time after the investigation was started, other information came to the department, indicating his connection with an alleged Mexican affair. The first development that indicated any positive violation of our statutes was in connection with his attempt to get an American passport under the name of E. V. Gates, on which to return to England, and in making the

passport he procured Andrew D. Malloy to testify that he was an American citizen and that he had known him as such for a number of years; that was the case that was first presented to the grand jury, although the entire investigation, of course, had in mind always the ascertainment of Rintelen's activities in this country, in so far as they concerned our Government.

Many witnesses were called at first with reference to that part of the case, and just when I could say a witness was in the Malloy-Rintelen case, and when he became a witness in this other case, which grew out of Rintelen's activities in this country, in financing Labor's National Peace Council, is hard to say, but the principal witnesses were officers of the Transatlantic Trust Co., with whom Rintelen banked. Other witnesses were the three you have had here to-day, Miss Foley, Mr. Snellings, and Mr. Kramer. I am not sure whether he testified before the grand jury or not.

Mr. CARLIN. He said he did; and Mr. Gompers and Mr. Morrison.

Mr. BIELASKI. Yes; I was thinking of it chronologically. Andrew D. Malloy became a witness. The officers of the National Metropolitan Bank here, where Mr. Martin, one of the defendants, had an account, were witnesses. There were certain witnesses whose names I do not know—that I can not recall offhand, but with whose identity I am familiar—certain detectives in New York, private detectives.

Mr. CARLIN. You can not tell us why certain officials of that organization were not indicted?

Mr. BIELASKI. No; I found no evidence was produced against them.

Mr. CARLIN. Was any immunity offered by your office to any of them?

Mr. BIELASKI. No, sir; we have no authority in our office to do that. That matter is handled by the district attorney, and as far as I know no immunity was offered to anybody connected with the case.

Mr. CARLIN. Was this matter, as far as you know, a matter of Mr. Marshall's initiation, or was it initiated by the Attorney General through your department?

Mr. BIELASKI. It was a case of which Mr. Marshall knew nothing at all until the facts with reference to the false passport were fully developed, when it was presented to him for action, the immediate occasion for its being presented at that time being that Mr. Andrew D. Malloy was returning to this country, and we desired to effect his arrest before he landed. That was the first time it was presented, because it was necessary first, before taking any action, to have the approval of the district attorney.

Mr. GARD. You mean the effort of Von Rintelen to obtain a passport under the name of Gates?

Mr. BIELASKI. Yes, sir; perhaps I should say Gates, failing to obtain the passport, sailed under the name under which he came to this country, and was taken by the British and interned in England and held a prisoner. Malloy, who was traveling in his company, landed and was temporarily detained by the British, and a large number of papers belonging to Von Rintelen being found in his possession his passport was taken up and he was compelled to return to this country.

Mr. CARLIN. Oh, we have no desire to ask what any witness testified to, but we desire to know whether there was testimony before

the grand jury which would perhaps justify an indictment of Representative Frank Buchanan?

Mr. BIELASKI. I am not familiar, of course, with all the testimony that went before the grand jury. I know that there was sufficient evidence to warrant the presentation of the case against Mr. Buchanan to the grand jury.

Mr. CARLIN. Are you familiar with the methods of organizing grand juries in New York?

Mr. BIELASKI. Yes, sir.

Mr. CARLIN. What is the organization of the grand jury in New York?

Mr. BIELASKI. Grand juries in New York, as I recall, are organized for a month at a time. Sometimes two grand juries are sitting, one in the morning and one in the afternoon. They are organized under the statutes applicable to all grand juries, which usually consist of 23 men selected in the usual way.

Mr. CARLIN. Who else has any connection with the grand jury while it is in session?

Mr. BIELASKI. Besides the district attorney?

Mr. CARLIN. Besides the district attorney; yes.

Mr. BIELASKI. The district attorney practically never appears before the grand jury in person, only on rare occasions. It is usually conducted by his different assistants.

Mr. CARLIN. You mean that the assistant district attorney remains in the room with the grand jury?

Mr. BIELASKI. During the examination of the witnesses; yes, sir. It is customary, during the vote, for the assistant district attorney to retire, but the conduct of investigations before the grand jury is in the hands of some assistant United States attorney, the foreman or any member of the grand jury being privileged to ask questions at any time. It is customary everywhere—

Mr. CARLIN. You mean the assistant district attorney is privileged to ask questions? It is the duty of the grand jury to conduct the investigation itself.

Mr. BIELASKI. In the Federal practice it is customary for the district attorney or the assistant district attorney to conduct the proceedings.

Mr. CARLIN. With reference to stenographic notes, is a stenographer present to take down the testimony as it occurs in the grand jury room?

Mr. BIELASKI. It is customary in important cases, and I think it is done almost uniformly in the southern district of New York. There are some legal questions of the right of a stenographer to be before the grand jury, which sometimes lead the Government to have inquiries made if the stenographer was present, so that no such questions should be raised, as it is not absolutely clear with reference to the right of the stenographer to be before the grand jury in all districts, but this matter has been determined in favor of the Government, I think, in the southern district of New York. In any event, it is the practice of the department to authorize—

Mr. CARLIN (interposing). Is there anyone else in the grand jury room except the assistant district attorney and the stenographer?

Mr. BIELASKI. No one but the grand jury and the witnesses, one at a time.

Mr. CARLIN. Now, what is the practice in the southern district of New York with reference to John Doe proceedings? Do you know whether they have a practice of sending out and bringing to the district attorney's office sometimes persons who are to be defendants themselves and interrogating them with reference to matters coming before the grand jury?

Mr. BIELASKI. I think it is the practice there, as in almost all cities, to bring, under subpoena, persons to be suggested by the district attorney before going to the grand jury.

Mr. CARLIN. Is there any authority of law for the district attorney to subpoena persons to be brought before him?

Mr. BIELASKI. He does not summon them to appear before him, but summons them in some proceedings before the grand jury, but sees them before they enter. Answering your question directly, there is no authority that I know of, although this practice exists very largely in all the principal cities.

Mr. CARLIN. Then this matter of the indictment of Buchanan and others was called in the regular way?

Mr. BIELASKI. Yes, sir.

Mr. CARLIN. There was nothing irregular about it as far as you know?

Mr. BIELASKI. Not a thing that I know of. As I say, it grew out of this other case, and was not in contemplation when the original proceedings started. One of the witnesses—well, I will not say that. This developed out of the grand jury room as well as in; but it developed that a great deal of money had been paid by Mr. Rintelen to David Lamar, and further investigation developed that Mr. Lamar had been interested in Labor's National Peace Council.

Mr. CARLIN. Did it also develop that Lamar had paid some of that money over to Taylor and Martin?

Mr. BIELASKI. Yes, sir; and others.

Mr. CARLIN. Was any paid over to Buchanan, as far as you know?

Mr. BIELASKI. I could not say that Mr. Lamar did. I believe that Mr. Buchanan got certain moneys that came from Mr. Rintelen.

Mr. CARLIN. One of the objects of this investigation, Mr. Bielaski, is to determine whether or not there was any testimony before that grand jury to justify the indictment against Representative Buchanan. Your opinion was that there was testimony?

Mr. BIELASKI. There certainly was testimony tending to involve Mr. Buchanan in that case. As I say, I do not know all of the testimony.

Mr. CARLIN. As far as you know, from your relations with the case, was there any effort on the part of the district attorney, as a matter of reprisal, to indict Representative Buchanan?

Mr. BIELASKI. Not that I know of. It is my recollection that the case was practically developed some time before there was any suspicion on anybody's part that Representative Buchanan contemplated any action against District Attorney Marshall. The case had been practically all developed in the facts before that time.

Mr. CARLIN. From your knowledge of the case, are you able to state whether or not Mr. Marshall was actuated in the matter of procuring this indictment by anything Representative Buchanan had said on the floor of the House of Representatives with reference to him?

Mr. BIELASKI. Nothing that I know of. Certainly, Mr. Marshall was justified in presenting the facts with respect to him to the grand jury, and had so done before anything of that kind had come up.

Mr. CARLIN. You mean, before Mr. Buchanan had said anything on the floor of the House?

Mr. BIELASKI. Yes, sir; I think it was December 14.

Mr. GARD. That is what I am particularly interested in. Tell me chronologically the order in which—

Mr. CARLIN (interposing). Do you remember when the evidence relating to the Buchanan indictment was first put before the grand jury?

Mr. BIELASKI. I think it must have been in September or October when the case was first begun. Mr. Rintelen sailed about the 3d or 4th day of August, and the presentation of that whole matter began at the time Malloy returned to this country, which was two or three weeks after Rintelen sailed.

Mr. CARLIN. Do you remember when the testimony relating to that indictment was concluded before the grand jury, when the last witness was summoned?

Mr. BIELASKI. I do not; but I could give you that information from consulting some of our records.

Mr. CARLIN. I did not catch that last.

Mr. BIELASKI. I say I could give you that information after consulting some of our records. But I should also say that the investigation into Rintelen's activities extended beyond the Labor's National Peace Council and is not yet at an end.

Mr. CARLIN. What I am trying to drive at is whether testimony relating to Buchanan's indictment was completed before Mr. Buchanan's first impeachment charges were made in the House of Representatives?

Mr. BIELASKI. I am not sure that it was absolutely completed in full. The bulk of the Government's case had been presented before that time. There may have been some witnesses who testified afterwards. I do not know exactly all they testified to.

Mr. CARLIN. Do you remember what that indictment charges him with?

Mr. BIELASKI. Conspiring with seven others to restrain foreign commerce and the manufacture of munitions of war, in violation of the Sherman Antitrust Act.

Mr. CARLIN. Your recollection was that there was proof or sufficient testimony to connect him with the matter and justifying the grand jury to return this indictment?

Mr. BIELASKI. I could not say just all the grand jury heard—I know there was sufficient evidence brought to Mr. Marshall's attention through our agents to warrant him presenting the facts with reference to Congressman Buchanan to the grand jury.

Mr. CARLIN. You say "warrant." You mean it was his duty to present that?

Mr. BIELASKI. Yes, sir.

Mr. CARLIN. You feel he would have been derelict in the discharge of his duty, if he had not?

Mr. BIELASKI. Yes, sir.

Mr. CARLIN. Would he not have to answer to the Attorney General's office if he did not do so?

Mr. BIELASKI. Yes, sir.

Mr. CARLIN. This proceeding in New York, as I understand you, was initiated by the Government itself?

Mr. BIELASKI. Yes, sir; the facts with respect to Labor's National Peace Council having been developed, though, in the grand jury inquiries into the activities of Rintelen. They were not known when the matter was originally presented.

Mr. CARLIN. But that went through your office and through you to the Attorney General, and then they were laid before Mr. Marshall with directions to lay them before the grand jury?

Mr. BIELASKI. I do not know whether there was any specific instructions, but Mr. Marshall was in daily touch with the department, almost. He was in Washington and had several conferences as to the law under which he could proceed, and was authorized to bring an indictment under the Sherman antitrust law and was in complete touch all the time with the department.

Mr. CARLIN. Do you mean to say upon his initiation, or upon the initiation of the department?

Mr. BIELASKI. Upon—I do not know how it started in the first place, whether he came to Washington on his own initiative, or whether the department called him, but his proceedings were under the direction of the department the same as any case and especially so in this case, because the department was giving it particular attention.

Mr. CARLIN. As a matter of fact, all of this testimony was handled by your office?

Mr. BIELASKI. The testimony was, to a very large extent, handled by our office, and was, of course, known to myself and to Mr. Warren, the Assistant Attorney General, who has charge of neutrality matters.

Mr. CARLIN. Then would we be correct in assuming that the whole proceedings first came under your observation, and by reason of the discharge of your public duties, to the Attorney General, and from him to Mr. Marshall?

Mr. BIELASKI. I can't be sure about what you are speaking, Mr. Chairman. The original investigation came about through the State Department, by reason of the receipt of a letter by the Secretary of State from the lady I referred to, and that was turned over to the Attorney General, and by him turned over to us for investigation, and then before the grand jury was the first development as to the Labor's National Peace Council. Of course, we took it right up as part of the case, and went ahead with it in the investigation around different parts of the country.

Mr. CARLIN. After you finished your investigation, then what did you do?

Mr. BIELASKI. The grand jury investigation and our investigation were proceeding along at the same time, and the results of our investigation—

Mr. CARLIN (interposing). And you laid the facts before the district attorney as you discovered them?

Mr. BIELASKI. Yes, sir; and he called the witnesses before the grand jury.

Mr. CARLIN. What I am driving at is this—whether Mr. Marshall was the person who was initiating the proceedings or whether your office was.

Mr. BIELASKI. It is hard to say, because of the way it developed. We were equally concerned in it. I take it. Mr. Marshall, in the conduct of this other investigation, got hold of the payment to David Lamar of these large sums of money.

Mr. CARLIN. What do you mean by "large sums of money"?

Mr. BIELASKI. Between \$200,000 and \$250,000. Mr. Rintelen had unlimited funds. He himself said he had credit to the extent of \$30,000,000. I think he has been the most important German secret agent that has been to this country since the war.

Mr. CARLIN. Then, everything Mr. Marshall did in connection with this indictment, at least the Attorney General's office was cognizant of and approved of?

Mr. BIELASKI. Yes, sir; possibly with the exception of some testimony before the grand jury that we might not have known. I do not know in full as to the testimony given by witnesses before the grand jury, although we know most of the testimony they were expected to give, as stated to our agents.

Mr. CARLIN. But your office did know there was sufficient testimony to require Mr. Marshall to see that it was laid before the grand jury?

Mr. BIELASKI. Yes, sir.

Mr. GARD. As I started a while ago to ask, but did not want to interrupt the chairman's trend of thought, I desire to know the chronological order of the presentation. Approximately, when was it that the State Department reported to the Department of Justice that Von Rintelen had endeavored to secure a United States passport under the name of Gates?

Mr. BIELASKI. I wish they had been able to make such a report. What they reported to us was the receipt of a suspicious application for a passport, about a week after it was received, about the 4th of August or the 5th of August, but too late to catch Mr. Rintelen, because he sailed a day or so before the State Department laid that before us.

Mr. GARD. That was the 4th or 5th day of August, 1915?

Mr. BIELASKI. Yes, sir.

Mr. GARD. That was the real initiation of all this investigation—the report of the suspicious letter from the State Department—the suspicious application?

Mr. BIELASKI. No, sir; that was not the beginning of the investigation of Rintelen's activities, but that was the first thing that we learned he did which was criminal. As I stated before, a lady who had been taken out to dinner by Rintelen—an American woman—thought so seriously of his hostile utterances that she conceived it to be her duty to advise the Secretary of State with reference to this man. That initiated the investigation, and that was possibly two weeks before he made the application for the passport. I remember I was away at the time.

Mr. GARD. How soon after your receipt of this advice with reference to this application was any of the matter presented to the grand jury in New York?

Mr. BIELASKI. The matter was presented to the grand jury in New York almost simultaneously with the arrest of Andrew D. Malloy on his return to this country, which was, I think, the latter part of August.

Mr. GARD. Tell me, is Malloy still under arrest?

Mr. BIELASKI. Malloy is under indictment.

Mr. GARD. With Von Rintelen?

Mr. BIELASKI. Yes, sir; for conspiring to defraud the United States in the procurement of an American passport for a man not an American citizen.

Mr. GARD. And out of this initiated investigation grew the other investigation of Von Rintelen's activities and later the activities of Labor's National Peace Council?

Mr. BIELASKI. Yes, sir; and I might state that we had secured information of the supposedly large sums of money that Rintelen had, and of unneutral activities in this country before the passport matter came up, and so we were very anxious to trace his financial dealings.

Mr. GARD. Was this testimony being presented to the grand jury gradually from time to time after as early as August, 1915?

Mr. BIELASKI. As early as the latter part of August or the early part of September, whenever Malloy returned to this country, the matter was presented as it developed to the grand jury.

Mr. GARD. Can you tell about the time when evidence—I am not asking what it was because I do not think that would be proper—but can you tell about the time when evidence was presented which involved Labor's National Peace Council? Can you tell us how early that was presented?

Mr. BIELASKI. I think it must have been in September; the first bit of evidence pointing in that direction was that developed from the bank account showing the payments to Lamar.

Mr. NELSON. Whose bank account?

Mr. BIELASKI. Rintelen's bank account with the Transatlantic Trust Co.

Mr. GARD. Was testimony offered from time to time to the grand jury after it was obtained after August and September?

Mr. BIELASKI. Yes, sir.

Mr. GARD. I understood you to say that it was practically completed early in December.

Mr. BIELASKI. Yes, sir; the main facts had been developed. Of course, it did not require very much time after the tracing of the money to David Lamar, to trace where he had spent some of it.

Mr. CARLIN. You say you traced some of the expenditures to Representative Buchanan?

Mr. BIELASKI. Yes, sir; some of the money we traced to Representative Buchanan.

Mr. CARLIN. You mean through David Lamar?

Mr. BIELASKI. I do not know. I would not be prepared to say just what evidence there exists as to the source of the money and through whose hands it went.

Mr. CARLIN. I do not want to ask the witness as to the testimony, but, on the contrary, we want to avoid that, and if any questions should be asked you as to what the testimony is that really did exist, I want to advise you that for the purpose of this present investigation it is not necessary to answer any such questions as would tend to give the Government's hand away. But we are trying to get at the fact of whether this indictment was procured on testimony or without it.

Mr. BIELASKI. I can say there was testimony. I could not state the full extent of the testimony because I really do not know it. Mr. Buchanan, of course, was prominently identified with Labor's National Peace Council and his name could not have been kept out of anything that involved an investigation of that council.

Mr. NELSON. I want to say as a preliminary that I am interested in the prerogatives of the House only with reference to the official activities of its Members—and in this case it has to do with the activities of one of its Members—to see that he is not called into question, as a Member, by any other department, and therefore I would like to know under whom you were acting in making this investigation, whether under Mr. Marshall's directions or the directions of the Attorney General.

Mr. BIELASKI. Under the directions of the Attorney General. The active direction of that case, however, was under Assistant Attorney General Warren.

Mr. NELSON. Under the direction of the Department of Justice?

Mr. BIELASKI. Yes, sir.

Mr. NELSON. You reported to him?

Mr. BIELASKI. Yes, sir; and Mr. Marshall, of course.

Mr. NELSON. But Mr. Marshall being merely the assistant of the department at the place where the case was being tried, or the indictment was being presented to the grand jury, you did not report to Mr. Marshall direct, did you? You reported to Warren and he reported to Marshall?

Mr. BIELASKI. No, sir; our plan of action was we sent all information we had to the New York office, which in turn sent it over to Mr. Marshall, and at the same time we sent all of the information to Mr. Warren every day.

Mr. NELSON. As a matter of fact, Mr. Warren was directing this investigation and Mr. Marshall would come to Mr. Warren to see what ought to be done right along?

Mr. BIELASKI. Frequently he came to Washington for conferences.

Mr. NELSON. And he took his directions from Mr. Warren, his superior?

Mr. BIELASKI. Yes; but at the same time I think I should say that the department does not instruct this man or that man to be indicted.

Mr. NELSON. But as a matter of fact the district attorney confers with the department and gets the opinion of the department as to what ought to be done on the evidence—is not that the fact?

Mr. BIELASKI. Yes, sir; but I do not think anybody in the department could have told you the names of the men who would be indicted before the indictment was returned. I am sure I did not know who was to be indicted. I knew a large number of men, about whom testimony was given, but who would be indicted I could not tell until the indictments were returned.

Mr. NELSON. Did you ever learn of the efforts of the peace council to interview the President?

Mr. BIELASKI. Yes, sir; we sent to the district attorney in New York the original files from the White House with respect to the matter.

Mr. NELSON. And also sent Mr. Buchanan's letter?

Mr. BIELASKI. Yes, sir; and all correspondence.

Mr. NELSON. Who directed that to be sent?

Mr. BIELASKI. I do not know who did. I got the correspondence and sent it myself. Whether it was asked for by the New York office or not I do not know, but I personally took the matter up over the telephone and had them take the file and send it up there.

Mr. NELSON. Was that done before you had knowledge of Mr. Buchanan receiving directly or indirectly some of this Lamar money?

Mr. BIELASKI. I could not answer as to that. It was probably all about the same time—closely connected. It may have been before, because that was one of the things that stood out. We all knew about it. It had been in the papers—his connection with the council. That would naturally be one of the first things done.

Mr. NELSON. Was there anything said by Mr. Marshall or by Mr. Warren that would show any desire on their part to retaliate because of those letters?

Mr. BIELASKI. Not a thing that I have ever heard. In fact Mr. Buchanan was very little discussed. We discussed the case without regard to particular defendants. I do not remember any discussion particularly with reference to Congressman Buchanan.

Mr. NELSON. Not discussed at all?

Mr. BIELASKI. Not that I know of.

Mr. NELSON. He was very prominent in public life and you would naturally have some concern as to the weight of testimony involving a Member of Congress, would you not?

Mr. BIELASKI. Yes, sir; we would have the same concern with respect to anyone who was being presented to the grand jury. I do not recall any discussion as to him individually as distinguished from a discussion of the whole case.

Mr. NELSON. Were you over in New York yourself to see Mr. Marshall?

Mr. BIELASKI. Yes, sir; I was over in New York several times, I think; and saw Mr. Marshall a number of times and saw him when he was in Washington a number of times.

Mr. NELSON. Did you confer with him about Buchanan?

Mr. BIELASKI. No, sir; I never discussed Mr. Buchanan with him as far as I know. I discussed with him the different features of the case, and I was in New York at the time when we secured a statement from an important witness who happened to be present.

Mr. NELSON. Relating to these indictments generally?

Mr. BIELASKI. Yes, sir.

Mr. NELSON. Or to Mr. Buchanan in particular?

Mr. BIELASKI. No, sir; just generally.

Mr. NELSON. Who is your representative in chief in your bureau in New York City?

Mr. BIELASKI. William Offley. I should state possibly for your general information that all our agents make daily reports to me so that I know what goes on everywhere.

Mr. NELSON. Are you chief of detectives for the Department of Justice?

Mr. BIELASKI. Chief of the Division of Investigations, which has charge of the investigation of—

Mr. NELSON (interposing). The Department of Justice has a special Bureau of Investigators?

Mr. BIELASKI. Yes, sir.

Mr. NELSON. And the Department of the Treasury also?

Mr. BIELASKI. Yes, sir.

Mr. NELSON. And the Post Office Department?

Mr. BIELASKI. Yes, sir.

Mr. NELSON. Did the Post Office bureau also investigate this case?

Mr. BIELASKI. Not that I know of.

Mr. NELSON. It was limited—

Mr. BIELASKI (interposing). Wholly to the Department of Justice.

Mr. NELSON. Has the Department of State a special line of investigators?

Mr. BIELASKI. No, sir; we do the bulk of the work for the State Department.

Mr. NELSON. The case has been virtually in your hands as far as the investigation is concerned?

Mr. BIELASKI. Yes, sir; absolutely. I do not mean to myself, but to our department.

Mr. NELSON. You are chief of it?

Mr. BIELASKI. Yes, sir.

Mr. NELSON. You direct it?

Mr. BIELASKI. Yes, sir.

Mr. CARLIN. Mr. Bielaski, it is very difficult to frame a question when you have not the idea of it. Did your department have the information that Mr. Buchanan was conferring with Lamar and these other gentlemen with whom he was indicted? I believe the indictment is for conspiracy.

Mr. BIELASKI. I want to answer your question fully. Of course, we did have; but I thought I saw what you meant, and it can not be answered absolutely by a question of that kind. Possibly I might add that under the Federal statutes and the law of conspiracy a man does not have to know all the conspirators. It is only essential he take some part in the conspiracy. He may have only known one of the fellow conspirators and still be guilty of the conspiracy of which they are all a part.

Mr. NELSON. You have stated somewhere in your testimony that this money—the Lamar money—came to Buchanan while he was president of the peace council; or was it afterwards?

Mr. BIELASKI. It must have been while he was connected with the peace council.

Mr. NELSON. Do you know anything about it?

Mr. BIELASKI. I am quite sure of it.

Mr. GARD. You have said that the department was in possession of evidence which indicated at least that there were communications between Mr. Buchanan and Mr. Lamar?

Mr. BIELASKI. Indirect, I presume. I do not know of any direct communication. Mr. Lamar was naturally not brought forward into the limelight. I do not believe that he would add anything to any cause to which his name might be associated. I think he appreciated that as well as anyone else.

Mr. GARD. That would imply that it is perfectly possible—and you do not know anything to the contrary—that Mr. Buchanan did not know this money was coming from Lamar?

Mr. BIELASKI. That is possible.

Mr. GARD. You do not know that he did know?

Mr. BIELASKI. I do not.

Mr. GARD. But in presenting the whole case you presented everything and let it come out in the case as to how far there was knowledge?

Mr. BIELASKI. Yes, sir; it may be that Mr. Buchanan did not know that the money came from Mr. Lamar. I do not know anything that affirmatively proves that he did.

Mr. GARD. But you knew that neither Lamar nor Martin were in the peace council while he was president—I mean officially?

Mr. BIELASKI. Officially maybe not, but Mr. Martin and Mr. Lamar were the peace council as far as finances went.

Mr. GARD. At what stage?

Mr. BIELASKI. Always.

Mr. GARD. From the beginning?

Mr. BIELASKI. As far as I know.

Mr. GARD. Do you know positively that they financed this thing in the beginning?

Mr. BIELASKI. As far as I know anything about its beginning—if it had any beginning that I know nothing about—

Mr. GARD (interposing). There are bills unpaid now?

Mr. CARLIN. We are acting, of course, as officials. Any question you object to, just submit it to us.

Mr. BIELASKI. I want to give you as full information as possible.

Mr. NELSON. We have only one purpose here. We are all public officials, and our only purpose is to ascertain the truth. Personally I am concerned to see just how a Member of Congress is involved.

Mr. BIELASKI. I do not think any particular consideration was given to individuals by the department. We would not proceed to the indictment of any man without believing the evidence we had justified presenting it to the grand jury. The responsibility, of course—what they do with it or do not do with it—is largely with the jury. The fact that a man is a Member of Congress does not, according to my view, give him any special class or anything of that sort. Any reputable man—or a man who is not reputable, for that matter—would be dealt with very carefully.

Mr. NELSON. I see your point, and I am not criticizing the department or anybody else; but the House is concerned, and directed this committee to investigate to see how far a Member of Congress has possibly been questioned for his actions in another place. Now, we are investigating an official of the executive department, and it is clear that Mr. Buchanan called upon the President, and in return wrote a letter when refused by the President to be seen officially as the president of the peace council, to which Secretary Tumulty replied. Now, I am concerned to know how far, if at all, that letter may have inspired the executive department to indict a Member of Congress.

Mr. BIELASKI. There was nothing that I know of in which that letter played a part, except after it became apparent that the Labor's National Peace Council was a creature of the German secret agent, Von Rintelen, in this country, and that Mr. Buchanan was connected with that organization. We tried to get all the information we could about the organization and the various officers, and I asked at either the suggestion of our New York office or upon my own initia-

tive—I am not sure which—Mr. Tumulty for all correspondence, and he bundled it together and sent it to New York—Mr. Buchanan's letters, etc.

Mr. NELSON. If this peace council's expenses were financed by Mr. Lamar, why was not the Canode bill paid?

Mr. BIELASKI. I can only answer this, that Mr. Rintelen sailed on the 6th—about the 4th of August, I guess it was—and I think at that time he was rather of the opinion that Labor's National Peace Council was a mistake. After he left there was no incentive for Mr. Lamar to part with any funds he got, and if anybody knows Mr. Lamar I do not think he will presume he will part with any money he does not have to. I do not think of the money that Mr. Lamar got that a very considerable amount went to Labor's National Peace Council. Mr. Lamar did a very good bit of business for Mr. Lamar.

Mr. NELSON. None of us, I think, have any desire to protect Mr. Lamar or any other criminal, but we are jealous to protect the prerogatives of Members of the House, so far as seeing that nothing is done by way of retaliation.

Mr. BIELASKI. With respect to retaliation, of course, I did not know whether Mr. Buchanan was going to be a defendant or not, and I know that the bulk of the case was presented before that was possible.

Mr. CARLIN. Do you know when Labor's Peace Council was organized?

Mr. BIELASKI. I do not recall. I do know from our records, but I do not recall. There was, of course, some missionary work done; men were sent around the country, and two meetings held, one here and one in Chicago. That was all in June and July.

Mr. CARLIN. Do you know when it was abandoned or disorganized?

Mr. BIELASKI. I do not know whether it was disbanded or died a natural death.

Mr. CARLIN. Do you know when Mr. Buchanan severed his connection with it?

Mr. BIELASKI. He severed his connection with it, I think, not so very long after his correspondence with the President. And I am not sure of the date now. I did not review our files before coming here, because I did not know just what you gentlemen wanted to ask me about. I did review them as far as I could.

Mr. NELSON. Let me ask you this question, bearing on your statement that Lamar and Martin were the peace council: Did they instigate the formation of the peace council in the first instance?

Mr. BIELASKI. As far as I know; yes, sir.

Mr. CARLIN. Do you know that to be the fact?

Mr. BIELASKI. Yes; I know that both Fowler and Martin went around the country and sent men around the country getting delegates appointed. Mr. Martin paid all the expenses of the delegates in cash. He had more money then than he had had for a long time. He paid Mr. Fowler's bills and his own and those of the delegates. In fact, I might say this: The minute we heard Mr. Lamar's name mentioned we began immediately to look for Mr. Schulteis and Martin as the two next in interest.

Mr. CARLIN. Were any of your subordinates witnesses before the grand jury?

Mr. BIELASKI. I do not know, Mr. Chairman, and certainly if they were it was probably as to admissions made by Malloy at the time of his arrest, or something of that sort. They were not witnesses to any particularly material facts that I know of.

Mr. CARLIN. Mr. Bielaski, one of the charges which we are asked to investigate is as to whether or not the office of the Department of Justice is using any moneys appropriated by Congress to investigate labor strikes?

Mr. BIELASKI. No; not as such, but we are investigating the activities of certain alleged agents of foreign Governments in this country who are, we believe, endeavoring to bring about strikes.

Mr. CARLIN. Do you know whether H. Snowden Marshall is using any funds of the United States Government appropriated by Congress for investigating labor strikes?

Mr. BIELASKI. The only method of investigation that the department has is through our force, or by the grand jury, and I know of no investigations of that sort except as they may be part and parcel of the activities of the foreign agents in this country; that is, we have been extremely careful not to make any investigation without primarily for the purpose of showing the activities on the part of foreign agents.

Mr. CARLIN. There is a statute which, I believe, prohibits your using any part of your appropriation for investigating labor strikes?

Mr. BIELASKI. No, sir; the antitrust appropriation can not be used, I believe, in prosecutions of labor organizations, but the appropriation for the detection and prosecution of crimes has no such inhibition. There is no practical limitation on the department except as to the one appropriation.

Mr. NELSON. There is the limitation as to which pocketbook it should be paid from.

Mr. BIELASKI. That is it.

Mr. NELSON. Then there were no investigations directly as to labor leaders, as such, for violations of the antitrust laws, as such, aside from foreign interests?

Mr. BIELASKI. No, sir; we have been asked lots of times to take up investigations by people interested in strikes, but we have been careful not to make such investigations, and when we made investigations we were distinct in letting it be understood it was of suspected agents.

Mr. NELSON. How long have you been the chief of detectives of the bureau? Pardon me for using the vulgar term "detectives" in connection with your work.

Mr. BIELASKI. I have no objection to the term. I have been chief of the bureau since April, 1912—at least, it was in the other administration.

Mr. NELSON. And before that were you in the active service?

Mr. BIELASKI. I was assistant chief.

Mr. NELSON. How long have you been in the Investigating Bureau?

Mr. BIELASKI. Since its organization in 1908. I was a special examiner before the bureau was created. I have been in the department since July, 1905.

Mr. CARLIN. Do you know whether or not the correspondence between Representative Buchanan and the President was presented to the grand jury?

Mr. BIELASKI. No, sir.

Mr. CARLIN. From what fund do you claim the right to investigate labor strikes?

Mr. BIELASKI. Our appropriation is for the detection and prevention of crime.

Mr. CARLIN. Under what appropriation are you paid?

Mr. BIELASKI. I am on the regular statutory roll, appropriated in the legislative bill. I am Chief of the Division of Investigation, which has to do with the investigation of any matters under the jurisdiction of the Department of Justice, covering the investigation of the activities of United States attorneys, marshals, etc.

Mr. NELSON. I noticed in some paper a reference to the Bureau of Investigation and Inquiry in New York?

Mr. BIELASKI. Yes, sir; we have offices in the principal cities. That is a branch of our office.

Mr. NELSON. What appropriation permits you to investigate the conduct of a Federal judge?

Mr. BIELASKI. There is no specific appropriation. If the conduct of a Federal judge is not in violation of a criminal statute, or believed to be, or in some way connected with a matter under the jurisdiction of the Department of Justice, we have no specific authority.

Mr. NELSON. Don't you exercise that power?

Mr. BIELASKI. We have exercised it on two or three occasions, always by direction of the President or the Attorney General; but in these cases there was an allegation of the violation of a law. You will recall we investigated the Archbald case, the Speer case, and possibly one or two other cases, but there is in each a specific allegation of false accounts, etc., all violative of the Criminal Code.

Mr. NELSON. As I recall the Speer case, that came right in the Department of Justice itself?

Mr. BIELASKI. That was one of our agents—an examiner.

Mr. CARLIN. Mr. Bielaski, you need not answer this question if you do not feel that you can properly do so. Have you any objection to stating at what time and place this money is supposed to have been paid to Mr. Buchanan?

Mr. BIELASKI. I have not sufficient information to answer that question.

Mr. CARLIN. Have you any objection to stating through which channels this information came?

Mr. BIELASKI. It came to me through the reports of our agents and of persons interviewed, who, I think, afterwards appeared before the grand jury as witnesses. I might say—and I think I ought to say this—that the temper of that grand jury which considered these matters was quite strong. They felt they were dealing with traitors and troublous times, and the activities of foreign agents in this country were occasioning a great deal of trouble.

Mr. NELSON. And they had been living in an atmosphere where the thing had been stirred up so much that there was naturally a feeling on the part of the jury that they would go the limit.

Mr. BIELASKI. Yes, sir.

Mr. NELSON. Would you have any objection to stating by whom this money was paid to Buchanan?

Mr. BIELASKI. By whom it was paid? [After a pause.] I do not know that I have the information sufficient to answer that. I could

summarize my information by stating that I have information that leads me to believe I have no doubt he had the money. My information leads me to have no doubt he did have the money.

Mr. GARD. You say, "he." Whom do you mean?

Mr. BIELASKI. Mr. Buchanan.

Mr. NELSON. Have you any objection to stating the amount? You have mentioned money. Why not state the amount, so we would know whether it was a large amount 5 cents, or \$1?

Mr. BIELASKI. I could name that, but I believe—I fear I would be getting too far into the evidence of the case. It was a substantial round sum.

Mr. NELSON. I will be frank in saying that my interest in this question and this thing is twofold: In the first place, we ought to find out whether a Member of the House has been fairly dealt with or whether it is a matter of retaliation. Now, the question comes up as to what evidence was presented to show whether there was a just cause. If it was an incident that was unknown to him, and you gentlemen had not been very careful, after all it would be a serious matter, because the House is involved, and, it seems to me, having gone into the question a little bit, we should find out sufficient to know whether it was your suspicion or an exact fact that he did receive a sufficiently definite sum with knowledge to justify your presentment to the grand jury.

Mr. BIELASKI. I do not know how I can answer that any better than I have. It seems to me that, with the information given to the district attorney, with respect to Mr. Buchanan, there was nothing for him to do but to lay it before the grand jury. The grand jury was not only engaged in hearing what evidence was brought before them, but also in developing the full facts. The grand jury is an inquiring body.

Mr. NELSON. The line is difficult to draw, and we want to protect both sides.

Mr. BIELASKI. It is extremely difficult to say anything about it without giving the evidence upon which the Government relies.

Mr. NELSON. I know it is difficult; but I should like to know whether there was any action on the part of the administration against a Member of Congress by way of retaliation, and, of course, we can find that out when the trial comes on. But in the mean time the House has asked us to investigate and to find out whether there was any questioning of a Representative in Congress, in another place, for things said on the floor of the House.

Mr. GARD. He has answered that.

Mr. BIELASKI. I thought I had. The department officials had no knowledge, as far as I know—certainly I had none—as to just who the defendants would be. The first evidence we had that Mr. Buchanan was indicted was when the announcement was publicly made.

Mr. CARLIN. You did know there was a likelihood of an indictment?

Mr. BIELASKI. Yes, sir; but there were other names considered by the grand jury as to whom there was no indictment. We presented all of the facts that we could get in reference to this matter, not only to the grand jury for their consideration, but as a basis for developing further facts.

Mr. NELSON. Were these facts presented to the grand jury piece-meal? Did you present certain facts on Monday, and, then, two weeks hence, more facts?

Mr. BIELASKI. Yes, sir; the grand jury even adjourned over for a time to give us time to make further investigations based upon what had been developed.

Mr. NELSON. There were some facts presented involving Mr. Buchanan, and, then, the grand jury adjourned?

Mr. BIELASKI. Mr. Buchanan did not figure in it in any prominent way in our investigation so as to segregate him as against other folks; but the whole of the case practically was presented before the middle of December.

The CHAIRMAN. I wish to ask Mr. Bielaski if he ever put forth any activities in the investigation of Mr. Buchanan, or whether or not he knows if any of his agents put forth any activities because he was a Member of Congress, or because of anything he said or did as a Member of the House on the floor in his representative capacity?

Mr. BIELASKI. Absolutely nothing.

The CHAIRMAN. Do you know of anything that the United States district attorney for the southern district of New York ever did in the way of investigating Mr. Buchanan because he was a Member of Congress, or because of anything he did or said on the floor of the House?

Mr. BIELASKI. Absolutely nothing. Mr. Marshall's prime interest seemed to be in Mr. Lamar. He had great interest in the case against him because of the legal point involved.

Mr. CARLIN. You are in Washington; and we will call you if we want you further.

(Thereupon, at 5.45 o'clock p. m., the subcommittee adjourned.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
New York City, February 28, 1916.

The subcommittee met at 10.30 o'clock a. m., pursuant to notice.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson.

Mr. CARLIN. The committee will come to order. There are present Representative Buchanan and Mr. Walter J. Walsh, counsel for Mr. Buchanan.

Mr. WALSH. If the committee pleases, I would like to state that I have been retained by Congressman Buchanan. He instructed me to familiarize myself with the list of the witnesses who are apt to be called here before the committee and with the facts that they are believed to be capable of testifying to. He instructed me to come here and present myself to the committee and ask permission, as a matter of courtesy from the committee, to call those witnesses and examine them in his behalf. Of course I am already aware, from my talks with you gentlemen, what your ruling will be on such a motion, but I desire formally to comply with my client's direction and my client's wish in order that my offer might be on the record.

Mr. CARLIN. I will say to Mr. Walsh that the committee will conduct this investigation in its own way and examine the witnesses in

its own way; and when the committee has finished, if you have any suggestion to make, you can make it to the committee, and we would either ask the questions or permit you to do so.

Mr. WALSH. Yes; I so understand.

Mr. GARD. We desire to get the full truth here, and if we deem that your questions may be material in securing that, we would be very glad to allow you to ask the questions.

Mr. WALSH. My own notion was that I thought, perhaps, I might be able to aid the committee; that, being familiar with the facts, I might be able to direct the attention of the witnesses to those facts.

Mr. CARLIN. Yes; we understand. Call Martin T. Manton.

TESTIMONY OF MR. MARTIN T. MANTON.

(The witness was duly sworn by Mr. Carlin.)

Mr. CARLIN. Please state your residence and occupation or profession.

Mr. MANTON. 576 Ocean Parkway, Borough of Brooklyn, New York City, and I am an attorney and counsellor at law.

Mr. CARLIN. Are you acquainted with H. Snowden Marshall, United States district attorney for the southern district of New York?

Mr. MANTON. Yes; I am.

Mr. CARLIN. Are you familiar with or have any knowledge at all of any relation of Mr. H. Snowden Marshall with the American Tobacco Co., the United Cigars Co., or the Metropolitan Distributing Co., or any other corporation?

Mr. MANTON. No; I have not—no knowledge of it.

Mr. CARLIN. Do you know of any matter that would be helpful to the committee in determining as to whether or not the office of United States district attorney is properly conducted?

Mr. MANTON. I know nothing that I could inform the committee about.

Mr. CARLIN. How many bar associations have you in New York City?

Mr. MANTON. In the Borough of Manhattan I know of the Bar Association of the City of New York and the New York County Lawyers' Association, and in the Borough of The Bronx there is the Bar Association of the Borough of The Bronx, and in Brooklyn there is the Bar Association of Brooklyn, and there is an association in Queens County, the Queens County Bar Association; and I am not sure as to whether there is an association in Richmond County or not.

Mr. CARLIN. What are the qualifications for membership in those organizations?

Mr. MANTON. My understanding has always been that it is a duly admitted and licensed attorney of good standing in the community.

Mr. CARLIN. Then any attorney of good standing would be eligible for membership?

Mr. MANTON. I so understand it that way.

Mr. CARLIN. And if charges were preferred against any person a member, it would be the duty of that association to investigate those charges?

Mr. MANTON. I think each association has a grievance committee, and when charges are preferred they are submitted to that committee, and that committee makes preliminary investigation, and if the facts warrant it, they make a charge against the attorney, and then it is presented to the appellate division of the supreme court of the State.

Mr. GARD. Mr. Manton, did I understand you to say that you had or had not been an adversary attorney in any trust litigation in which the district attorney, Mr. Marshall, was representing anybody?

Mr. MANTON. No; I have not.

Mr. GARD. You have not?

Mr. MANTON. Not that I recall.

Mr. GARD. Have you been counsel representing anyone in which he was on the other side in any customs litigation proceeding?

Mr. MANTON. No.

Mr. GARD. Or any matters in relation to bankruptcy proceedings?

Mr. MANTON. No; not that I recall.

Mr. GARD. Have you ever appeared in the United States district court in a case in which Mr. Marshall, the district attorney, was acting in his official capacity on the other side?

Mr. MANTON. No; I have appeared in civil litigation.

Mr. GARD. In civil litigation?

Mr. MANTON. And I think I was consulted a few times in some criminal litigations. I do not think I appeared or tried a case while he has been district attorney.

Mr. GARD. Do you know Mr. Marshall personally?

Mr. MANTON. My acquaintance with Mr. Marshall—I knew him when he was in active practice, before he became United States attorney. I met him several times, and that is all.

Mr. GARD. Can you advise us whether or not Mr. Marshall, in his official conduct as United States district attorney, tries to influence the bringing of cases to any law firm in which he is interested or was interested?

Mr. MANTON. I have no knowledge about that.

Mr. GARD. Can you advise us as to whether or not the conduct of Mr. Marshall is such as to attempt in any way to intimidate any other counsel in the city of New York or within the southern district of New York?

Mr. MANTON. I have no knowledge as to that.

Mr. GARD. Did you ever hear of anything of that kind—like that?

Mr. MANTON. The only thing I ever heard was what was in the newspapers, about the Slades matter. That was very indefinite.

Mr. GARD. So far as you are personally concerned, can you advise us anything of that?

Mr. MANTON. No; I can not.

Mr. GARD. Do you know anything about the so-called "Rae Tanzer case"? Did you have any part in that?

Mr. MANTON. No; I did not.

Mr. GARD. You know nothing of that personally?

Mr. MANTON. No.

Mr. GARD. Is there any other line of questions that counsel want to pursue?

Mr. WALSH. Pass that [handing paper to the clerk, who, in turn, handed the same to the chairman].

Mr. GARD. We have been requested by counsel appearing for Mr. Buchanan to ask these questions:

The first question is: Are all lawyers of New York members of the bar association?

Mr. MANTON. No; I am not, for one, I know; I am in Brooklyn, but not in New York.

Mr. GARD. This question does not recite which bar association. I presume it is like all other cities—some belong and some do not?

Mr. MANTON. Yes.

Mr. GARD. The second question is: Can you give the number of lawyers in New York who are members of the association? I presume that refers to the New York Bar Association, does it?

Mr. WALSH. Yes.

Mr. GARD. New York Bar Association, and the number who are not?

Mr. MANTON. I really can not help you, I am sorry to say. I have been urged to join both of them, but I have never done so, up to date.

Mr. GARD. I presume, of course, their membership is a matter of record?

Mr. MANTON. Yes.

Mr. GARD. And the membership, taken from the entire number of New York lawyers, could advise us of this absolutely?

Mr. MANTON. Yes; they ought to do it.

Mr. CARLIN. Are there any other questions you want to ask, Mr. Walsh?

Mr. WALSH. No.

Mr. NELSON. Your name has been given us as one of the possible witnesses in this case. Have you had any conversation with anyone in reference to this impeachment of Mr. Marshall?

Mr. MANTON. I have, if you call this a conversation; I would be glad to relate it, if you want me to.

Mr. NELSON. We would be glad to know.

Mr. MANTON. I was called on the long-distance telephone from Washington on—I think it was the day before New Years—December 31—and I talked with Congressman Martin.

Mr. NELSON. Who?

Mr. MANTON. Mr. Martin, who is involved. I do not know whether he is an ex-Congressman or not.

Mr. NELSON. Congressman Martin?

Mr. MANTON. Yes.

Mr. NELSON. You do not know whether he is a Congressman or not?

Mr. MANTON. No; but he is one of the men who is under indictment—the indictment that has been found against Congressman Buchanan.

Mr. NELSON. He is not a Member of Congress.

Mr. MANTON. Well, I did not know that. He called my office, and I was lunching at the Railroad Club, and I was connected—my office connected me at the Railroad Club, and I then talked with him. My clerk talked with me first, and said Congressman Martin wanted to talk with me. I thought he was a Congressman; and then he spoke about me taking up the defense of that case, and asked to see me, and asked if I would come to Washington that night, which I did, and there I saw Congressman Martin—

Mr. CARLIN (interposing). He is not a Member of Congress.

Mr. MANTON. Or Mr. Martin, and then they talked of this proceeding—this impeachment proceeding, but it was very indefinite.

Mr. NELSON. In that conversation that you had with Mr. Martin did you not say that you knew of things that Mr. Marshall had done that were not entirely proper?

Mr. MANTON. No; what I said was this: I suppose I am privileged to state what I said. I do not know whether it is considered in confidence or not.

Mr. NELSON. We will let you judge that.

Mr. MANTON. No; they talked of these impeachment proceedings, and I told them that they ought to have something tangible upon which to work before they went ahead with Marshall.

Mr. GARD. You say "them." Whom do you mean by "them"?

Mr. MANTON. There were three or four at this conference involved in this.

Mr. GARD. Do you know who they were?

Mr. MANTON. Congressman Buchanan was there; Mr. Hill, Mr. Martin, and somebody else; I can not recall the name for the moment.

Mr. NELSON. In that conversation did you state to any of them that you knew of certain things, done by Mr. Marshall, that were subject to criticism, at least?

Mr. MANTON. No. I did say—I told them that I supposed they might find out if there was any such thing by consulting men who had had experience with the office, such as Mr. Battle, and that firm, also the Slades, and people who had been convicted. If there is anything you want to call my attention to, or Mr. Buchanan can—

Mr. GARD (interposing). Do you know whether a man named Schulteis was present at that conference?

Mr. MANTON. Yes; he was the other man. No; I do not know whether Schulteis was there or not. Congressman Buchanan can probably tell us.

Mr. GARD. I am just asking for your recollection.

Mr. CARLIN. Was Lamar there?

Mr. MANTON. Who?

Mr. CARLIN. Mr. Lamar.

Mr. MANTON. No.

Mr. GARD. Was Mr. Fowler there?

Mr. MANTON. Fowler? Yes; that is the man—Fowler. I do not think Schulteis was there. Was he?

Mr. GARD. Do you recall where the conference was held?

Mr. MANTON. At the New Willard Hotel.

Mr. GARD. In Mr. Fowler's room?

Mr. MANTON. Yes.

Mr. GARD. And, according to your recollection, there were present Mr. Fowler, Mr. Buchanan, Mr. Hill, yourself, and—

Mr. MANTON (interposing). And Mr. Finn, of my office.

Mr. GARD. And Mr. Finn?

Mr. MANTON. Yes.

Mr. GARD. And Mr. Martin?

Mr. MANTON. Yes; and Mr. Martin.

Mr. GARD. Do you recall whether Schulteis was there or not?

Mr. MANTON. I do not think he was. I am not sure.

Mr. GARD. Was that the only time you had a conference with these gentlemen?

Mr. MANTON. Yes; that is the only time.

Mr. GARD. And that conference was for the purpose of consulting you professionally about the matter, was it?

Mr. MANTON. Well, I supposed that was it, or I would not have gone down there.

Mr. GARD. May I ask you this question. It is privileged, of course; you do not have to answer, unless you want to: Did you have any professional employment as the result of that conference?

Mr. MANTON. No.

Mr. NELSON. Have you had any conversation with Mr. Marshall about this case?

Mr. MANTON. No. When I was subpoenaed as a witness here in Washington, I called him up on the telephone and asked him if there was anything—I asked him if he knew what I was wanted for. He said “No; that he was not paying any attention to the matter.” That is all.

Mr. NELSON. You have not had any conversation with any of his assistants?

Mr. MANTON. No.

Mr. NELSON. Did you tell him over the telephone that you did not know anything about this case and that you had not had anything to do with it?

Mr. MANTON. I did. I think I said I knew nothing about it, and I wanted to know if he knew anything that was wanted of me.

Mr. NELSON. May I inquire why you did that, when he was under impeachment?

Mr. MANTON. Because it did not appear on the subpoena, and I wanted to know which side I was subpoenaed by. I think the language I used to him was if he could refresh my recollection about anything that I might be asked about.

Mr. NELSON. Did he inform you on which side you were subpoenaed?

Mr. MANTON. No; he said he did not know. He said he was not paying any attention to any of it.

Mr. GARD. This conference you had when you came over to Washington, was it about any matter of impeachment, or was it concerning an indictment that had been found?

Mr. MANTON. I suppose it was concerning the defense on the charge upon which there had been an indictment found.

Mr. GARD. You said, I believe, a while ago that in this conference you told them not to proceed with the impeachment unless they had something tangible, I think. Was that the expression you used?

Mr. MANTON. No; I do not think I told them not to proceed with the impeachment. As I understood it, the impeachment proceedings had been started then.

Mr. GARD. Yes?

Mr. MANTON. And I told them they ought to have something tangible upon which to base it. They did relate something of what they thought about it.

Mr. GARD. Did you say anything in that conference, in the presence of Mr. Buchanan and others, to the effect that Marshall favored Mr. Battle in his litigation, or that there were rumors to that effect in the city of New York?

Mr. MANTON. No. I did say, I think, that Mr. Battle had a lot of litigation in that office. I know nothing about it. If I did I would be very glad to inform you if there was any favoritism.

Mr. GARD. We understand.

Mr. MANTON. I would like to say to you that my acquaintance with Mr. Marshall is not more than that I have met him by introduction several times and, I think, professionally. I have not seen him or talked with him since he has been in that office, except once to bow to him, I think, at a restaurant.

Mr. CARLIN. Have you any question, Mr. Walsh, you want to ask this witness?

Mr. WALSH. No; I have not.

Mr. CARLIN. Then you may stand aside. We are very much obliged.

(Witness excused.)

Mr. CARLIN. Now, Mr. Dale.

TESTIMONY OF MR. ADDRICH J. DALE.

(The witness was duly sworn by Mr. Carlin.)

Mr. CARLIN. State your residence and occupation.

Mr. DALE. Residence, 1893 Seventh Avenue, New York; importer and manufacturer.

Mr. CARLIN. Were you foreman of the grand jury that found an indictment against Messrs. Martin, Schulteis, Buchanan, and others?

Mr. DALE. I was.

Mr. CARLIN. Was that indictment found in the usual way, by a vote of the grand jury?

Mr. DALE. It was.

Mr. CARLIN. Do you remember when it was found?

Mr. DALE. At the last session of that grand jury. I could not remember the date. I think it was the Monday or the Tuesday following Christmas.

Mr. CARLIN. How long had you been investigating that particular case?

Mr. DALE. Well, we had been investigating cases which this was more or less the outcome of for a period of three months or four months—three months, I should say.

Mr. CARLIN. Do you recall how many witnesses there were, if any, that testified against Mr. Buchanan before your grand jury?

Mr. DALE. I could not recall that exactly. The minutes of the grand jury would show that.

Mr. CARLIN. I did not ask you to recall exactly. Can you tell us if there were more than one?

Mr. DALE. I should think so; but I would not say positively.

Mr. CARLIN. You would not have found an indictment upon the testimony of one witness, would you?

Mr. DALE. The grand jury found the indictment. I was foreman of the grand jury, and the grand jury's conscience is their own.

Mr. CARLIN. You were a member of that grand jury?

Mr. DALE. I was.

Mr. CARLIN. And your conscience is your own, too, is it not?

Mr. DALE. Exactly.

Mr. CARLIN. Do you know whether there were as many as two witnesses?

Mr. DALE. I would not want to testify to that, because my recollection does not go back on that subject, because I have paid no attention to it since and have not kept it in my mind. It was fresh in my mind at the time of the session of the grand jury.

Mr. CARLIN. Do you know whether there was anybody, except members of the grand jury, in the grand-jury room while you were all there taking the testimony and considering this particular case?

Mr. DALE. At no time, except an official interpreter?

Mr. NELSON. Except what?

(The answer was thereupon read aloud by the reporter, as follows:)

At no time, except an official interpreter.

Mr. GARD. Interpreter?

Mr. DALE. Yes; interpreter.

Mr. CARLIN. Was there a stenographer present?

Mr. DALE. Naturally; that belongs to the grand jury.

Mr. CARLIN. What is that?

Mr. DALE. I say that belongs to the records of the grand jury. Who else was to take the minutes?

Mr. CARLIN. Was the stenographer present?

Mr. DALE. The stenographer, naturally, was present.

Mr. CARLIN. Was the district attorney present at any time?

Mr. DALE. The district attorney was present when he was presenting his case.

Mr. CARLIN. Was Mr. Marshall there himself?

Mr. DALE. Mr. Marshall was there himself on certain occasions.

Mr. CARLIN. Did he present this case to the grand jury himself?

Mr. DALE. He made a résumé of this case.

Mr. CARLIN. You remember that he was present and discussed this case before the grand jury, do you?

Mr. DALE. After all the testimony was in, and it was a case that had taken quite sometime, the district attorney presented to us the law in the case on which he asked our consideration, and made a partial résumé of some of the testimony and as bearing upon the law. Absolutely in a judicial capacity.

Mr. CARLIN. Do you remember whether it was the district attorney himself or an assistant who did that?

Mr. DALE. I testified the district attorney.

Mr. CARLIN. The district attorney. Did he have any private conversations with you that were not in the presence of other members of the grand jury with reference to this particular case?

Mr. DALE. He had none, and after the indictment was found I met him in the hall, as I was getting the certificate to prove that I had been on the grand jury, as we had a special exemption, and that was all; simply passed the time of day and innocent remarks; nothing bearing upon the case whatsoever.

Mr. NELSON. Where did you sit during the sessions of the grand jury?

Mr. DALE. I presided as chairman.

Mr. NELSON. Describe the room; was the grand jury off to one side?

Mr. DALE. The grand jury was seated at one side of the room, which we will call the head of the room, at a slight elevation, in tiers.

Mr. NELSON. And where did you sit?

Mr. DALE. There was a table in front of them lengthwise, and I sat at one side of that table.

Mr. NELSON. Who else was at that table?

Mr. DALE. At that table, at my right was the secretary of the grand jury; beside me was the chair for witnesses; at the other end of the table facing me was the official stenographer; and the assistant district attorney or the district attorney, whoever was presiding, was seated on my left.

Mr. NELSON. Were there sometimes two—the district attorney and his assistant?

Mr. DALE. There were.

Mr. NELSON. At one time?

Mr. DALE. Yes.

Mr. NELSON. The official interpreter, who was he?

Mr. DALE. There was an official interpreter called in to translate testimony given in a foreign language.

Mr. NELSON. To the grand jury?

Mr. DALE. To the grand jury.

Mr. NELSON. Did he remain after he had finished interpreting?

Mr. DALE. Positively not.

Mr. NELSON. How?

Mr. DALE. Positively not. He was sworn as an interpreter, performed his duties, and was dismissed. There were two such.

Mr. NELSON. The only persons present, then, at any of these sessions of the grand jury who were not of the grand jury were the district attorney and the stenographer?

Mr. DALE. The district attorney, his assistant, and the stenographer.

Mr. NELSON. You say this particular case was considered something like three months?

Mr. DALE. Practically this case and what it was the outgrowth of. It was a series of investigations on different subjects, and this was possibly the result of it.

Mr. NELSON. The subjects generally were with reference to the matter under which the indictment was found?

Mr. DALE. The subjects in general were more or less pertaining to it; yes.

Mr. NELSON. Was this pushed right along or did it seem to drag occasionally?

Mr. DALE. I would not want to say that. The testimony was given, and the grand jury acted in its capacity as an investigating body.

Mr. NELSON. Yes.

Mr. DALE. The testimony was presented to it as it was received and as the district attorney was in position to present it to us.

Mr. NELSON. You had read, had you, Mr. Dale, in the New York newspapers that Mr. Buchanan had impeached Mr. Marshall before you found this indictment against him?

Mr. DALE. I never read the word "impeached" from the papers. I read that there was a motion made in Congress for the purpose of an impeachment, but there was no impeachment.

Mr. NELSON. You read, as a matter of fact, that a Member of Congress had on the floor of the House charged Mr. Marshall with some misdeeds?

Mr. DALE. I read that in the public prints.

Mr. NELSON. And discussed it in the grand-jury room?

Mr. DALE. No more than to mention that such a thing was in the papers; that was all.

Mr. NELSON. But you heard other members of the grand jury discuss it?

Mr. DALE. Other members of the grand jury mentioned that they had read it in the paper, the same as I did; nothing more or less.

Mr. NELSON. And they felt rather indignant over it?

Mr. DALE. Absolutely no feeling in the matter expressed by anyone.

Mr. NELSON. None at all?

Mr. DALE. None whatsoever.

Mr. NELSON. Did Mr. Marshall refer to it at all in his résumé of the case?

Mr. DALE. Absolutely not.

Mr. NELSON. Had the business of the grand jury with reference to this case somewhat stopped before that impeachment?

Mr. DALE. No.

Mr. NELSON. I mean by "impeachment"—we call it impeachment when a member rises on the floor——

Mr. DALE (interposing). The very motion is an impeachment?

Mr. NELSON. No. It is a charge; it is the beginning of an impeachment.

Mr. DALE. I see.

Mr. NELSON. Before you read of it in the newspapers, had there been any action taken to the effect that it was not worth while returning any indictment against Buchanan?

Mr. DALE. Absolutely not. Things went along in their ordinary course, and this had absolutely no bearing on it whatsoever.

Mr. NELSON. Was not that discussed in the jury room at all?

Mr. DALE. Absolutely not. We simply mentioned that the public prints brought that. The public prints brought a great many things. There were a great many things brought in the public prints relating to what we had done and what we were investigating, which, to us, seemed more or less ridiculous. That is, not any action that was taken, but things that were published—things they published. They knew more of our business than we did ourselves.

Mr. NELSON. After you read of the impeachment of Mr. Marshall, can you fix the date or the time you read of that?

Mr. DALE. No; there is no way for me to fix that.

Mr. NELSON. How long was it after you read of the impeachment that you actually found the indictment against Mr. Buchanan?

Mr. DALE. I could not say. The indictment was found the last day of the grand jury. The last day of our session we found that indictment.

Mr. NELSON. Did you hurry it along, then, afterwards?

Mr. DALE. We did not, sir. As I testified, that had no bearing on it whatsoever. We did not consider it. It was not part of our affair.

Mr. CARLIN. I want to see if I can refresh your recollection with reference to the number of witnesses before the grand jury by asking you whether or not you recall whether Mr. Gompers appeared before that grand jury as a witness?

Mr. DALE. Mr. Gompers appeared before the grand jury.

Mr. CARLIN. Did Mr. Morrison appear before that grand jury?

Mr. DALE. Mr. Morrison appeared before that grand jury.

Mr. CARLIN. Do you remember whether Mr. Bielaski appeared before that grand jury?

Mr. DALE. What is that name?

Mr. CARLIN. Bielaski.

Mr. DALE. I do not remember.

Mr. CARLIN. Do you remember whether Miss Catherine Foley was a witness before that grand jury?

Mr. DALE. There was a Miss Catherine somebody, but I don't know whether it was Foley or not.

Mr. CARLIN. Do you recall whether they testified in the matter relating to Mr. Buchanan or not?

Mr. DALE. I believe Mr. Buchanan's name was mentioned.

Mr. CARLIN. Mentioned by Mr. Gompers and Mr. Morrison?

Mr. DALE. I believe they did; yes.

Mr. CARLIN. You do not remember Mr. Bielaski, the head of the Government Secret Service Bureau?

Mr. DALE. I do not recall the name. There were several people belonging to the service that testified, but I could not recall that name. If I saw the party, I might recall it, but the name of such a witness would make no impression upon me.

Mr. CARLIN. Was the grand jury investigating the question of this indictment at the time that Mr. Buchanan made this statement on the floor of the House?

Mr. DALE. Was the grand jury investigating the case at the time this impeachment affair was considered?

Mr. CARLIN. Yes.

Mr. DALE. They were.

Mr. CARLIN. Do you recall how long before that they had been investigating this case?

Mr. DALE. That I would not want to say, but Mr. Buchanan's name had been mentioned at the early stages of the case. How early, I could not testify to with any exactness.

Mr. CARLIN. When did this grand jury meet?

Mr. DALE. This grand jury was known as the September grand jury. It met the early days of September, and performed ordinary routine business, and passed several cases, and started a line of investigation, of which this indictment was part of the result.

Mr. CARLIN. Do you remember what month that investigation was started?

Mr. DALE. It was started in the end of September, or the beginning of October, I believe. It was before the September term had finally ended. As you know, we sat four months instead of one.

Mr. CARLIN. You adjourned in January?

Mr. DALE. The day this indictment was found we adjourned.

Mr. CARLIN. Do you remember what month that was?

Mr. DALE. That was the end of December. I think that was the week between Christmas and New Year's. If my recollection is right, I believe we did not act until after Christmas. We may have acted the day before Christmas and returned the indictment the day after. I think that was it, because the question of Christmas intervening was raised.

Mr. CARLIN. Do you recollect whether this was the only case in which Mr. Marshall appeared before your grand jury or not?

Mr. DALE. In the course of this investigation Mr. Marshall appeared a few times. In the previous cases I do not think he did, but there was another district attorney, or rather a first assistant district attorney, who assisted another district attorney in another case, but I would not want to say that Mr. Marshall did not appear.

Mr. CARLIN. Can you tell us whether it was the habit of the district attorney to appear before the grand jury or not?

Mr. DALE. Well, in every grand jury that I have ever served on the district attorney has appeared at some time or other.

Mr. CARLIN. Does he appear by your request or his own volition?

Mr. DALE. His own volition.

Mr. CARLIN. He was never summoned by the grand jury?

Mr. DALE. We never asked for him on the grand jury. I may correct that. The question did arise whether we should continue with our sessions, because we had been in session beyond our regular term. The assistant district attorney had expressed the thought that they were burdening the grand jury with their investigations, and if the grand jury was willing—had no right to keep us in session for any length of time, but if we were willing, they would be pleased to have us, and that was spoken of informally in the grand jury, and the opinion was arrived at that they would be willing to sit. I advised the assistant district attorney to so advise Mr. Marshall. Under such conditions he was sent for; otherwise not.

Mr. CARLIN. Mr. Dale, was there any private conversations between you and the district attorney or assistant district attorney with reference to the finding of this or any other indictment?

Mr. DALE. There was not. Simply the natural conversations that took place in the grand-jury room. No conversations took place outside of that province. If it had been, it would have been a violation of our duty.

Mr. CARLIN. Do you recall any instance where the district attorney, either out or in the grand-jury room, undertook to use any persuasion to bring about an indictment in this or any other case?

Mr. DALE. Not to me, and not to my knowledge.

Mr. CARLIN. Then, under your practice here, the district attorney makes a résumé of the testimony that is before you and argues the case *ex parte* in session?

Mr. DALE. From what little experience I have had in cases that have been turned out, the district attorney at times makes a résumé of the case. The district attorney or his assistant in all cases instructs us as to the questions of the law, because the law, we are instructed by the judge, we are to take from the district attorney.

Mr. CARLIN. The judge instructs you before you go into the grand-jury room?

Mr. DALE. Before we go into the grand-jury room, that the district attorney is to be our assistant in the course of our investigations, and all questions of law, quite naturally, the district attorney will advise us on.

Mr. CARLIN. Leave out this natural business and get down to the facts. You say the judge advises you to take the law from the district attorney and not from the court?

Mr. DALE. I would not want to state that in those words, for the simple reason that is my impression.

Mr. CARLIN. Just state it in your own way.

Mr. DALE. My impression always has been that upon questions of law, we are to get the questions of law—when it comes down to a direct question of law—from the court, but when the district attorney is presenting the case we are to know the law, how the law reads, and to know what the law is from the district attorney.

Mr. CARLIN. You say you have got that impression?

Mr. DALE. Yes; I have always had that impression.

Mr. CARLIN. Did not get that impression from the court, of course?

Mr. DALE. I would not want to say that.

Mr. CARLIN. You say you have served on grand juries frequently?

Mr. DALE. I have served on the grand jury before.

Mr. CARLIN. Has it been the custom, whenever the grand jury wanted to know the law, to get it from the district attorney?

Mr. DALE. The only instance I ever knew of our having gone down to the court to get any information on a question of law was when there was an obstreperous witness. Always, whatever information we had relative to the law, we received from the district attorney on this grand jury and on previous grand juries that I have served on.

Mr. CARLIN. Did you not have occasion more than once while serving on this grand jury to ask the district attorney what the law was in this particular case or any other case?

Mr. DALE. The case was presented to us in the ordinary course, and the district attorney gave us the law under which an indictment could or could not be found.

Mr. CARLIN. And you accepted his construction of the law as final in this matter?

Mr. DALE. We accepted his reading of the law and his telling us what it meant, where we were in doubt as to the correct interpretation of the law.

Mr. NELSON. In making his résumé, did he comment on the weight of the testimony under the law?

Mr. DALE. He did not, sir. He simply resumed the testimony that had taken place and its possible bearing.

Mr. NELSON. The testimony and its possible bearing.

Mr. DALE. Yes, sir; laying no stress and no weight; questions were asked him for certain things we applied in certain conditions, and he advised yes or no, as the case might have been.

Mr. GARD. Just a few questions. Who was the Assistant Attorney General in active charge of the present action of the case of the Government, which resulted in the indictment against von Rintelin, Lamar, Buchanan, and whoever the others were?

Mr. DALE. A young man named Sarfaty.

Mr. GARD. Do you remember who it was that had charge of your grand jury, what judge?

Mr. DALE. The original charge I do not recall, because inasmuch as we were sworn in originally by one judge and our sessions were prolonged, I do not recall who the original judge was.

Mr. GARD. Your session was prolonged three months over the ordinary time of the grand jury?

Mr. DALE. It was.

Mr. GARD. Was that for the reason that you had entered into cases that you had not finished?

Mr. DALE. Exactly; so as to save the Government the résumé of the case before another grand jury.

Mr. GARD. And Mr. Sarfaty you think had charge of the grand jury during most of the time you were there?

Mr. DALE. He did.

Mr. GARD. During most of the time you were there?

Mr. DALE. He did.

Mr. GARD. Examining the witnesses and presenting the evidence?

Mr. DALE. He did.

Mr. GARD. Do you recall when Mr. Marshall first appeared in your grand jury room?

Mr. DALE. The very beginning of the case.

Mr. GARD. The beginning of the case?

Mr. DALE. The beginning of the investigations, including the names you have mentioned.

Mr. GARD. It was first considered around the case of Von Rintelin, was it not?

Mr. DALE. It was.

Mr. CARLIN. And from that there were certain developments?

Mr. DALE. There were developments in many directions.

Mr. GARD. And you say that Mr. Marshall was there at the beginning of that case?

Mr. DALE. If my recollection can be relied upon, I would say he was present at the first or second session that we took up this case.

Mr. GARD. That was some time in September, 1915?

Mr. DALE. That was the end of September, beginning of October.

Mr. GARD. 1915.

Mr. DALE. Yes, sir; that is my recollection.

Mr. GARD. You say he did come at the beginning of the session?

Mr. DALE. Yes.

Mr. GARD. How long did he remain, do you remember?

Mr. DALE. I would not want to say. He came in as I recollect and listened to the cases that were being taken care of by his assistants.

Mr. GARD. Did he appear from day to day?

Mr. DALE. He did not. He never did appear from day to day—came in occasionally. I would not think that he appeared over half a dozen times in all.

Mr. GARD. Do you remember with reference to the time when he finally returned the indictment, which I believe you said was a short time after Christmas Day?

Mr. DALE. Yes.

Mr. GARD. With reference to the day you returned the indictment, how, immediately before that, had the United States district attorney himself been before the grand jury?

Mr. DALE. The United States district attorney had been to the grand jury just before the indictment was found, when he charged the grand jury, as I have told you.

Mr. GARD. I expect you do not mean charge the grand jury. You mean the completion of the evidence and law.

Mr. DALE. That was it. I would not know what word to call it.

Mr. GARD. That was immediately before you returned the indictment?

Mr. DALE. That was immediately before we found the indictment.

Mr. GARD. How long before that time had he been in the grand-jury room?

Mr. DALE. He might have appeared in the grand-jury room during the week before that. I would not want to say. He came in erratically. There was no such thing as his coming in regularly.

Mr. GARD. Was there any other case in which he presented the evidence and the law to the grand jury, except this one?

Mr. DALE. On this grand jury, I think not.

Mr. GARD. You think this was the only case?

Mr. DALE. I did not say as—this case was the result of a great many others, as you have inferred from the beginning, and he charged us; he made the résumé on those cases. There was no other case that we sat on that he made a résumé on.

Mr. GARD. By this, what you call a résumé, you mean he made an argument on the evidence and on the law?

Mr. DALE. I would not call it an argument, for the simple reason he prefaced his remarks by telling us that the question that had been presented to us, that an indictment could possibly be found under such and such a paragraph, etc. Inasmuch as the case had been before us quite a time, he mentioned certain things connected with it.

Mr. GARD. Did he say in his remarks that Mr. Buchanan had presented charges of impeachment against him on the floor of the House of Representatives?

Mr. DALE. He did not, and he was surprised that he did not.

Mr. GARD. Did Mr. Sarfaty, his assistant, say that either in words or in effect to the grand jury at any time?

Mr. DALE. He did not.

Mr. GARD. Were you ever in the office of Mr. Marshall, his private office, discussing the evidence in the case, or discussing the fact that these charges had been preferred against Mr. Marshall in the Congress of the United States?

Mr. DALE. No, sir.

Mr. GARD. Did you ever discuss that in Mr. Sarfaty's office?

Mr. DALE. No, sir.

Mr. GARD. With him?

Mr. DALE. No, sir; I never was in any office with the district attorney or his assistants.

Mr. GARD. With anyone connected with the district attorney's office?

Mr. DALE. Absolutely not.

Mr. GARD. Was there any statement, either in terms or effect, in this conclusion which Mr. Marshall made, asking you to return an indictment because he had charges preferred against him by a Representative in Congress?

Mr. DALE. No, sir; nothing of the kind, or did he ever mention any such charges. The only knowledge any of us ever had of such charges was from the public prints, not from any official source.

Mr. NELSON. You stated that Mr. Marshall did not say to you that Mr. Buchanan had presented charges of impeachment against him on the floor of the House, and that you were surprised that he didn't.

Mr. DALE. Yes.

Mr. NELSON. Please explain that.

Mr. DALE. The public prints had been so full of remarks on these subjects of the impeachment, and it struck me as strange that the district attorney should be so fair and impartial as not to make any reference to it whatever. I would not have been surprised if he had. In fact, I would really expect that a remark would have been made.

Mr. NELSON. You think naturally he would resent that?

Mr. DALE. I naturally would have thought so, yes; but he did not.

Mr. NELSON. You thought that it was an important thing, and it was strange that he did not take that into consideration in making his résumé?

Mr. DALE. I consider it creditable to him that he did not make any remark.

Mr. NELSON. It was in your mind at the time?

Mr. DALE. It was, yes, sir; that was what was in my mind.

Mr. NELSON. And I presume there was some discussion on the part of other members of the grand jury?

Mr. DALE. No; I would not say that there was, because we were anxious after the finding of this indictment—we were all of us anxious to get away and get through with it. All of us had more or less neglected our personal affairs, and we were anxious to get back to the ordinary course of our lives.

Mr. NELSON. This wound up the work of the grand jury?

Mr. DALE. It did.

Mr. NELSON. Then you quit?

Mr. DALE. We did.

Mr. NELSON. It was the last thing?

Mr. DALE. It was.

Mr. NELSON. Had you been considering any other cases during these three months?

Mr. DALE. We had been considering cases, as his honor remarked here, which had more or less bearing with the outcome of the original Von Rintelin case.

Mr. NELSON. Weren't you considering first the peace council?

Mr. DALE. The question of the peace council was not the beginning of the case.

Mr. NELSON. Are you positive of that?

Mr. DALE. I am positive of that. The peace council affair was an outgrowth of our investigation.

Mr. NELSON. Have you discussed this with anybody?

Mr. DALE. I have not, sir.

Mr. NELSON. With Mr. Marshall?

Mr. DALE. No, sir; I have not seen Mr. Marshall since the day we were discharged.

Mr. NELSON. Any of his assistants?

Mr. DALE. Certainly not, sir.

Mr. NELSON. Did you call them up over the phone when you were subpoenaed?

Mr. DALE. I certainly did not, sir.

Mr. NELSON. I will ask you these questions that have been submitted to me, and I think they are proper questions. Who prepared or drew up the indictment?

Mr. DALE. The assistant district attorney, I believe.

Mr. NELSON. What was his name?

Mr. DALE. Sarfaty.

Mr. NELSON. You say you believe?

Mr. DALE. Yes.

Mr. NELSON. Do you know?

Mr. DALE. I would not know who drew the papers.

Mr. NELSON. That was your understanding at the time?

Mr. DALE. Naturally my understanding.

Mr. NELSON. When was it drawn up?

Mr. DALE. It was drawn up after we found the verdict.

Mr. NELSON. Who directed, if anyone, the drawing up of the indictment?

Mr. DALE. I would not know how to answer that question, because I don't grasp it. It is not customary for the grand jury—

Mr. NELSON. Who requested the indictment?

Mr. DALE. The grand jury found a true bill. The district attorney was informed that a true bill had been found and upon the result of his having been informed that a true bill was found, the indictment was drawn and presented to me for signature. After signing by myself it was presented to the court.

Mr. NELSON. Did Mr. Marshall give you reasons why you should find an indictment?

Mr. DALE. He did not, sir.

Mr. NELSON. How many times have you been a grand juror?

Mr. DALE. A grand juror on this occasion. I was on the grand jury for a lengthy time two years ago, or three years ago.

Mr. NELSON. How long have you known Mr. Marshall?

Mr. DALE. I met him during the sessions of this grand jury.

Mr. NELSON. Had you known him before that?

Mr. DALE. No, sir.

Mr. NELSON. Has he or any of the firm of Gorman, Battle & Marshall ever acted as your counsel?

Mr. DALE. No, sir.

Mr. NELSON. Did Mr. Marshall discuss the law of the case with any member of the jury?

Mr. DALE. He simply quoted the law and answered questions that were put to him.

Mr. NELSON. Did you, as a juror, take the law from Mr. Marshall and guide yourself accordingly?

Mr. DALE. I did.

Mr. NELSON. Have you conferred with Mr. Marshall or anyone in his office before coming here to testify?

Mr. DALE. Certainly not, sir.

Mr. NELSON. Did you consider that Mr. Marshall, in asking an indictment against the persons named, might be influenced by the fact that an effort was being made in Congress to impeach him?

Mr. DALE. I testified that I found that he did nothing of the kind. In fact, he did not ask for the indictment. He presented the law on the case and said "This is the law on the case," and asked the grand jury to act upon it.

Mr. NELSON. The point is, did you have in mind that he might be influenced by the fact that he had been impeached? I think you stated it before.

Mr. DALE. My personal impression was that he was not influenced by it in any way, shape, or form.

Mr. NELSON. At the time he was making the résumé, I think you stated that he did not make any statement and you were surprised?

Mr. DALE. Surprised that he was so absolutely fair and never varied out of his judicial capacity.

Mr. NELSON. What was the offense for which the grand jury indicted Mr. Buchanan and the other gentlemen?

Mr. DALE. A misdemeanor.

Mr. NELSON. A misdemeanor?

Mr. DALE. Yes.

Mr. NELSON. Describe it.

Mr. DALE. Violation of one passage of the Sherman antitrust law.

Mr. NELSON. What particularly was the nature of the offense?

Mr. DALE. It was a conspiracy under the Sherman law, relative to interfering with trade—actions in restraint of trade.

Mr. NELSON. Now, Mr. Dale, was there anything presented to the grand jury other than that these gentlemen had received funds from some source?

Mr. DALE. Well, I do not know as I am privileged to testify on that score. The minutes of the grand jury will give you everything that took place. If they are at your command, they will tell you everything.

Mr. NELSON. I want to get at the offense. Was that part of the offense in your mind?

Mr. DALE. The offense in our mind was a conspiracy.

Mr. NELSON. To do what?

Mr. DALE. A conspiracy in restraint of trade.

Mr. NELSON. In what way did you have in mind that this offense was committed? How?

Mr. DALE. That one or more persons conspired with one and another to interfere with the legitimate course of trade in various directions.

Mr. NELSON. I want to ask you what testimony was presented; but was testimony to the effect that it actually interfered with trade?

Mr. DALE. There was testimony to the effect that trade was interfered with in a general way.

Mr. NELSON. Was there anything in a specific way?

Mr. DALE. Let me think.

Mr. NELSON. I am not asking for the nature of the testimony, but for the fact whether there was testimony before your committee that Mr. Buchanan had interfered with trade in a specific way?

Mr. DALE. I would not want to state that there was any direct testimony that Mr. Buchanan had interfered personally with the restraint of trade in any specific way.

Mr. NELSON. Well, did he conspire to do this, and were there overt acts to show that he did conspire?

Mr. DALE. The grand jury found that there was a conspiracy, and that Mr. Buchanan had part in it.

Mr. NELSON. Well, now, you are not answering the question.

Mr. DALE. The only way I can answer it, your honor—

Mr. NELSON. I want to know whether you have any recollection of a specific act?

Mr. DALE. I told you I would not want to testify to that; but I have no recollection in that direction at the present moment.

Mr. CARLIN. Mr. Walsh, have you any further questions you would like to ask this witness?

Mr. WALSH. No further questions.

TESTIMONY OF MR. JOEL B. BARBER.

(The witness was duly sworn by Mr. Carlin.)

Mr. CARLIN. Give your name, residence, and occupation to the stenographer.

Mr. BARBER. Joel B. Barber. I am an architect, employed by Frank B. Hoffman, 15 East Fortieth Street.

Mr. CARLIN. Were you a member of the grand jury of which Mr. Dale was foreman?

Mr. BARBER. I was.

Mr. CARLIN. Was that the grand jury that found the indictment against Messrs. Lamar, Martin, Buchanan, and others?

Mr. BARBER. It was.

Mr. CARLIN. Do you recollect whether or not the district attorney made a résumé of that particular case—the Buchanan case—before the grand jury?

Mr. BARBER. I do recall that.

Mr. CARLIN. Did he make an argument to the grand jury?

Mr. BARBER. I do not know what constitutes an argument. He went over the evidence as Mr. Dale described. We had been in session for some time, and Mr. Marshall went over the various points of the case. Is that what you mean, sir?

Mr. CARLIN. Did he ask you to find an indictment against these gentlemen?

Mr. BARBER. He did not.

Mr. CARLIN. Did he say it was your duty to find an indictment, or anything to that effect?

Mr. BARBER. He did not—nothing to that effect.

Mr. CARLIN. Do you remember who the witnesses were that testified before that grand jury?

Mr. BARBER. I might tell you some of them.

Mr. CARLIN. Well, go ahead. I mean in this case, the Buchanan case.

Mr. BARBER. There was Mr. Gompers. I can only remember the later ones. There was the treasurer of the Atlantic Trust Co., a Mr. Bockman, if my memory serves me right. My memory is not very good for names. I can only give you these in general. There were men that I can't remember their names in connection with the labor organizations. Some came from Chicago, if I remember rightly.

Mr. CARLIN. Do you remember if there was a man by the name of Kramer?

Mr. BARBER. I remember Mr. Kramer's name; yes.

Mr. CARLIN. Do you remember Mr. Morrison?

Mr. BARBER. Only vaguely, sir. I could not place Mr. Morrison.

Mr. CARLIN. Do you remember Katherine Foley?

Mr. BARBER. From Washington? I remember a stenographer coming from Washington, who, I believe, was employed at one time in Mr. Fowler's office.

Mr. CARLIN. That is Katherine Foley. Now, I do not want to ask you to tell this committee what the questions were, but was there any testimony before that grand jury tending to show that Representative Buchanan was guilty of conspiracy to restrain trade?

Mr. BARBER. Yes; inasmuch as he was one member of a conspiracy. Personally, I think that is a direct personal relation with the indictment that we found against him.

Mr. CARLIN. You mean that he was directly interested in the conspiracy, by your answer?

Mr. BARBER. Inasmuch as he was associated with the conspirators; yes. He was one of the conspirators. I should say, directly; yes.

Mr. CARLIN. Was he just incidentally lugged in, or was there some overt act of his which brought you to that conclusion?

Mr. BARBER. I have no right or knowledge to answer that question, because I don't know.

Mr. CARLIN. You say you have no right to answer the question?

Mr. BARBER. No; because I don't know whether he was lugged in or what started it. I could not answer that, sir.

Mr. CARLIN. Well, you were a member of the grand jury, were you not?

Mr. BARBER. I certainly was.

Mr. CARLIN. Do you know what testimony there was before the grand jury?

Mr. BARBER. Yes, sir.

Mr. CARLIN. Do you know whether there was any testimony there directly connecting Representative Buchanan with this conspiracy?

Mr. BARBER. I have already answered that question.

Mr. CARLIN. Answer it again.

Mr. BARBER. It connects him with it, inasmuch as he was one of the body of conspirators which came under the law on which the indictment was found for conspiracy in restraint of trade.

Mr. CARLIN. Who instructed you as to the law?

Mr. BARBER. The law was read from a book.

Mr. CARLIN. By whom?

Mr. BARBER. At different times, both by Mr. Marshall and Mr. Sarfaty, the assistant who conducted the case.

Mr. CARLIN. You say the law was read at different times to you?

Mr. BARBER. Yes.

Mr. CARLIN. What was the necessity for reading it to you at different times?

Mr. BARBER. So that we should be familiar. The whole feeling was one of great fairness, I think, and the men in charge, the district attorney and his assistant, seemed anxious to have us understand just what we were doing and on what basis we were doing it.

Mr. CARLIN. Seemed to be afraid you would misunderstand?

Mr. BARBER. Not in the least, sir. He only seemed anxious that we should understand.

Mr. CARLIN. How often did he read you the law, so you might understand it?

Mr. BARBER. I could not say. I should say it was read more than once. You see this investigation was carried on over a period of three or four months.

Mr. CARLIN. Now, was this investigation against Buchanan and Martin and the others made at the request of the district attorney, or was it made by the grand jury as an outgrowth of another matter pending before the grand jury?

Mr. BARBER. Do you mean that we asked that the investigation be made?

Mr. CARLIN. I mean did you conduct it yourselves, on your own motion, or was the action of the grand jury based upon the motion of the district attorney?

Mr. BARBER. I do not think I get you. I don't understand just what you mean by that. We had nothing to do with the continuance of the investigation in this particular line. We began with the passport case, and this other thing was the outgrowth of that.

Mr. CARLIN. You know as a member of the grand jury that the grand jury has a right to make any investigation of violation of the law that it may please to do? You know that, do you not?

Mr. BARBER. No; I did not know that.

Mr. CARLIN. What was your idea; that you could only make such investigation as you were asked by the district attorney to make?

Mr. BARBER. My idea is that certain investigations are to be made, and grand juries are drawn to hear the evidence, and I went there and served my month, and as these others were the outcome of this one in September, we were asked to serve, and we all did.

Mr. CARLIN. Well, tell us how this investigation came to be made. Was it brought to your attention or did you or your grand jury upon its own initiative start this investigation?

Mr. BARBER. Oh, no. The grand jury did not do so. It was brought by the officers of the court, who were of course deeper into it than we, because they were doing the actual investigating, and we were asked to remain to consider the evidence further than our one month.

Mr. CARLIN. You felt as a member of the grand jury that you need not return the true bill unless you were convinced that there was reason to return it?

Mr. BARBER. Exactly.

Mr. CARLIN. You would not return an indictment just because the district attorney asked you to do so?

Mr. BARBER. We would not, but the district attorney at no time asked us to do so.

Mr. CARLIN. Was the district attorney or his assistant present in the room during the deliberations of the grand jury?

Mr. BARBER. They were not. They retired in every case.

Mr. CARLIN. They retired?

Mr. BARBER. Yes.

Mr. CARLIN. Was the official stenographer present at the deliberations of the grand jury?

Mr. BARBER. At no time. That was the regular custom, for them to retire.

Mr. CARLIN. Was there anybody present, except the grand jury, during your deliberations?

Mr. BARBER. At no time.

Mr. CARLIN. Who was the clerk of this grand jury?

Mr. BARBER. Who was the clerk?

Mr. CARLIN. Yes; was his name Bonner?

Mr. BARBER. I don't recollect.

Mr. CARLIN. Was he present during the deliberations of the grand jury?

Mr. BARBER. Do you mean the stenographer?

Mr. CARLIN. I mean the clerk. Did you not have a clerk in the grand jury?

Mr. BARBER. No; we had a grand jury and the man conducting the case, the attorney and the stenographer, that is all of the witnesses as they occurred.

Mr. CARLIN. I understood the foreman to say you had a clerk to the grand jury, or secretary.

Mr. BARBER. We had a secretary who was a member of the grand jury.

Mr. CARLIN. Of course, he remained during the sessions of the grand jury, as he was a member?

Mr. BARBER. Of course, and always voted with the grand jury.

Mr. CARLIN. Are you sure that the clerk to the grand jury was a member of the grand jury?

Mr. BARBER. Perfectly sure, sir, if you mean what I call the secretary.

Mr. CARLIN. Do you remember his name?

Mr. BARBER. I don't recall.

Mr. CARLIN. Is he correct in that, Mr. Dale? Was the secretary of the grand jury a member of the grand jury?

Mr. DALE. Certainly.

Mr. CARLIN. We have a memorandum there that Mr. John Bonner was clerk of the grand jury.

Mr. DALE. No such recollection. We had originally a man named Citron, afterwards excused, and then a man named Williams was secretary, and I believe on one occasion, in his absence, a young man named Daly was secretary.

Mr. GARD. Each of the secretaries were members of the grand jury?

Mr. BARBER. Both of the secretaries were members of the grand jury.

Mr. DALE. Yes; and kept a record of the indictments found and called the roll.

Mr. GARD. Is it true, because the grand jury was so long in session, that there were some changes in the membership of the grand jury—some excused?

Mr. DALE. There was one member excused. We started with 23 and finished with 22.

Mr. BARBER. No changes at all, except that one.

Mr. CARLIN. How often have you served on the grand jury?

Mr. BARBER. This was the second time, sir. I served two years previously.

Mr. CARLIN. Have you served on petit jury?

Mr. BARBER. I have not.

Mr. CARLIN. Did you have any conversation with Mr. Marshall or any of his subordinates while this indictment was pending or since?

Mr. BARBER. No; I spoke to Mr. Marshall in the corridor at the last session. That is the only time I had ever spoken to him privately. Then he said "Good-by," and I said I had been interested in the case. That was about the entire conversation. He thanked me.

Mr. NELSON. This proceeding which culminated in the indictment of Mr. Buchanan and others, I understand, extended over a period of, say, three months; is that right?

Mr. BARBER. Yes, sir; three or four.

Mr. NELSON. Four months?

Mr. BARBER. Three or four. Our original month was September. Our first month served was for the month of September and we served until after Christmas.

Mr. NELSON. Who was the witness that appeared before your grand jury with reference to this matter?

Mr. BARBER. I could not tell you, sir.

Mr. NELSON. Can not you remember approximately who was the first to call your attention to things that were being considered?

Mr. BARBER. I could not. I could only guess at it. I could not give you an answer.

Mr. NELSON. Now, this surely must have been a very important matter in your mind. You were interested in it, were you not?

Mr. BARBER. Very much.

Mr. NELSON. And it concerned men in public life and questions of great importance, did it not?

Mr. BARBER. Yes.

Mr. NELSON. Now, you must have been impressed with the first facts laid before you, were you not?

Mr. BARBER. It was so closely interwoven with the indictment of Von Rintelin that I can not go back and remember.

Mr. NELSON. Was that the first event laid before you?

Mr. BARBER. What was it?

Mr. NELSON. Were the facts in reference to Von Rintelin the first thing called to your attention? What was the first thing called to your attention in this case?

Mr. BARBER. What was the first thing called to my attention?

Mr. NELSON. I want to get at the way this case was carried on. What were the first things called to your attention, or what persons first appeared?

Mr. BARBER. Well, with reference to the first case, we found an indictment against Von Rintelin and another man for getting fraudulent passports.

Mr. NELSON. That was the same grand jury?

Mr. BARBER. That was the same grand jury in September. Von Rintelin was also among those indicted on this last case for conspiracy, which included Fowler and Martin.

Mr. NELSON. When it first came up for your attention what was the offense you were considering?

Mr. BARBER. Von Rintelin securing a fraudulent passport.

Mr. NELSON. That was settled by an indictment?

Mr. BARBER. Yes.

Mr. NELSON. Now, you commenced to consider this other case?

Mr. BARBER. Exactly.

Mr. NELSON. What was the first offense that you had in mind with reference to this other matter?

Mr. BARBER. I can tell you the first case that was in my mind—I mean the first part I can recall in my mind.

Mr. NELSON. I want the fact as to what the offense was and who were the witnesses.

Mr. BARBER. I can not tell you who the witnesses were, but I can tell you what the offense was.

Mr. NELSON. What was the offense?

Mr. BARBER. The offense was conspiring to restrain trade.

Mr. NELSON. That was the thought that you had in mind of the offense at the beginning, or was that something brought in subsequently, as the facts were brought out?

Mr. BARBER. I could not answer that.

Mr. NELSON. Now, I want to know if you are positive that that was the offense at the very beginning that you had in mind, or was it something—

Mr. BARBER. I can only give you the best of my recollection, and to the best of my recollection I think it was.

Mr. NELSON. Who was the first witness that called your attention to something done that was a violation of that section of the law?

Mr. BARBER. I could not tell you the first witness in that regard. I only remember them in general.

Mr. NELSON. Was it with reference to the peace counsel?

Mr. BARBER. To the best of my recollection, no; not the peace counsel at that time. If you want my recollection, I will be very glad to give it to you.

Mr. NELSON. Take the first—you had a three or four months' consideration of this case. During the first month what was it that was being considered, the peace counsel?

Mr. BARBER. Case of the fraudulent passports.

Mr. NELSON. I am talking about the subsequent case. That was an indictment with reference to Von Rintelin's loan?

Mr. BARBER. Yes.

Mr. NELSON. Now, I mean the first month in which you considered the present indictment of Mr. Buchanan and others.

Mr. BARBER. That must have been in October.

Mr. NELSON. What witnesses were you considering?

Mr. BARBER. I have already answered you that I can not tell. I can not recollect exactly. I can only tell you in general.

Mr. NELSON. Well, did Mr. Harrison or Mr. Gompers come in that month?

Mr. BARBER. Mr. Gompers came in very near the end.

Mr. NELSON. And Mr. Kramer near the end?

Mr. BARBER. My recollection is that he came midway in the proceedings.

Mr. NELSON. And what time did Buchanan's name come into it, toward the end or the middle, or where?

Mr. BARBER. I can only answer in a general way. I should say in the middle.

Mr. NELSON. He was a Member of Congress, was he not?

Mr. BARBER. Yes.

Mr. NELSON. And you knew it?

Mr. BARBER. Yes, sir.

Mr. NELSON. Were you not a little bit interested in a Member of Congress being drawn into this conspiracy?

Mr. BARBER. I was.

Mr. NELSON. Then you ought to remember.

Mr. BARBER. Perhaps I ought, from your point of view, but from my own, I can not give you any more definite answer than I have. I am trying very hard to remember and answer your questions and am doing so to the best of my ability.

Mr. NELSON. When did you read in the newspapers of the impeachment of Mr. Marshall by Mr. Buchanan in the House?

Mr. BARBER. I don't remember when I read it.

Mr. NELSON. But you remember, as a matter of fact, you did read it?

Mr. BARBER. I remember reading it at the time it was published; yes.

Mr. NELSON. And discussing it with other members of the grand jury?

Mr. BARBER. I do not think I did, sir.

Mr. NELSON. Well, will you positively state you did not?

Mr. BARBER. Yes; I will positively state that I did not.

Mr. NELSON. Did Mr. Marshall comment on that at all in your presence?

Mr. BARBER. Not to my knowledge.

Mr. NELSON. Did you think it surprising that he did not, at the time?

Mr. BARBER. Why, no; I had a general idea that those things were not discussed. I do not think I was at all surprised.

Mr. NELSON. Have you talked this matter over with Mr. Dale at any time?

Mr. BARBER. Not to my recollection. I might, in passing, have said that it was an interesting proceeding, or something of that sort, but nothing more.

Mr. NELSON. Not in any detail?

Mr. BARBER. Not in any detail at all.

Mr. NELSON. Did you notify, by telephone or otherwise, any member of Mr. Marshall's official force that you were coming here to testify before this committee?

Mr. BARBER. I did not.

Mr. NELSON. Have you talked over your testimony with anybody?

Mr. BARBER. Have I talked?

Mr. NELSON. Have you talked over your testimony with anybody?

Mr. BARBER. Except I gave notice at my office that I would have to be absent this morning, for this purpose.

Mr. NELSON. Did you hear any member of the grand jury discussing in your presence the impeachment of Mr. Marshall by Mr. Buchanan, when this thing was being considered in the grand jury? Did you hear other jurors discuss it?

Mr. BARBER. I believe I heard it mentioned.

Mr. NELSON. In the grand jury room?

Mr. BARBER. Yes; but I can only say that to the best of my recollection. I have no definite knowledge of any one person speaking of it.

Mr. NELSON. Well, generally, what was said?

Mr. BARBER. Remarked on the publication of this thing, and that is all. We were always busily occupied, and there was no chance for discussion, and I do not think that the jury wished to discuss these things. They were very conscientious, I thought, all of them.

Mr. CARLIN. Did you investigate other cases during the time you were investigating the case against Buchanan and others?

Mr. BARBER. We did not.

Mr. CARLIN. Did Mr. Marshall personally present any other cases to you at any time?

Mr. BARBER. Not to my recollection; no, sir.

Mr. CARLIN. Did you consider the law and follow it?

Mr. BARBER. Except, sir, I believe he appeared in this first case of Von Rintelin. As a matter of fact, I think I remember that, but not in the other cases. Only in these two case of Von Rintelin and the other.

Mr. CARLIN. Did you consider the law and follow it as the district attorney gave it to you?

Mr. BARBER. Yes.

Mr. CARLIN. Did you personally do anything yourself, while acting as a grand juror, except to listen to the evidence and find a true bill?

Mr. BARBER. I asked questions at various times when I wanted further information. I believe the minutes will show all of that.

Mr. CARLIN. Was there any occasion while you were a grand juror upon which you did not return a true bill?

Mr. BARBER. I believe so, in one case.

Mr. CARLIN. Were you asked by the district attorney not to return it in that case?

Mr. BARBER. No, sir; we had no such instruction at all. The evidence was turned over to us, and he retired from the room, and we voted on it in all cases.

Mr. CARLIN. Have you been advised by anybody as to what you should or should not testify to before this committee?

Mr. BARBER. I have been advised by no one.

Mr. CARLIN. Have you asked anybody?

Mr. BARBER. No.

Mr. CARLIN. In the case of the indictment about which we are talking, did you gather the impression from what the district attorney said that he desired a true bill?

Mr. BARBER. No; except that I got the impression that the district attorney was making a very earnest effort, and a very thorough effort, to get at the bottom of anything that broke the law; that is all.

Mr. CARLIN. Did you gather that he had gotten at the bottom of it is this case?

Mr. BARBER. I don't think I quite know what I am supposed to answer there. Do you mean I think that my evidence that I found that indictment on was all right?

Mr. CARLIN. No; I mean did you think when you voted for this indictment, that you were carrying out his wishes?

Mr. BARBER. No; I thought I was indicting a conspiracy, or I would not have voted.

Mr. CARLIN. Did you gather the impression that it was his desire that you should vote that way?

Mr. BARBER. Not unless his evidence showed I should. There was a very clear air about that whole thing.

Mr. CARLIN. Did you gather the impression that his evidence, according to his construction of it, did say that you should?

Mr. BARBER. I gathered that the evidence was such that I should vote for an indictment on the law that he read me, directly from the book. He read the grand jury—

Mr. CARLIN. Did he comment upon the law that he read you?

Mr. BARBER. Only to make it clear. It was very clear, a very short paragraph relating to this particular section.

Mr. CARLIN. Was there anything about the statute that was not clear?

Mr. BARBER. What is the statute—the paragraph?

Mr. CARLIN. The paragraph of the Sherman law.

Mr. BARBER. No; very clear.

Mr. CARLIN. Perfectly clear?

Mr. BARBER. Yes.

Mr. CARLIN. And yet he commented upon it to make it clear?

Mr. BARBER. I would not say that.

Mr. CARLIN. Did you not just say that?

Mr. BARBER. Did I?

Mr. CARLIN. Did you not?

Mr. BARBER. If I did, I was only saying that in reading this paragraph he did not then put the book down and say nothing. Very probably he made some comments.

Mr. CARLIN. Were you affected in your judgment in the return of this indictment by anything that the district attorney said or did?

Mr. BARBER. Not in the least.

Mr. CARLIN. Mr. Walsh, have you any questions you want to ask him?

Mr. WALSH. Yes; I have one here.

Mr. GARD. Pardon me. How many cases did you consider during the time you were on the grand jury?

Mr. BARBER. During the first month we served as a general grand jury—considered the Von Rintelen case.

Mr. GARD. The so-called passport case?

Mr. BARBER. The so-called passport case, and we considered two or three small cases of robberies of post offices, and some obscene letters, and two or three other small things that took a very short time. There were probably in that first month three others in addition to the Von Rintelen case—three or four.

Mr. GARD. After this general business, then your activities were confined entirely—I mean as a grand jury investigating body—confined to the developments that grew out of the Von Rintelen case?

Mr. BARBER. Exactly.

Mr. GARD. Which finally had their conclusion in the indictment against Von Rintelen and Lamar and Buchanan and whoever the rest were who were indicted?

Mr. BARBER. Exactly.

Mr. GARD. Do you remember when your grand jury arose as a grand jury? When you finished your labors—I mean when you were discharged.

Mr. BARBER. No; it was about the first of the year, shortly after Christmas.

Mr. CARLIN. Did the stenographer take everything that occurred in the grand jury room?

Mr. BARBER. To the best of my belief.

Mr. CARLIN. Did he take down the remarks of the district attorney?

Mr. BARBER. I do not know.

Mr. CARLIN. Do you know whether he was instructed not to take them down?

Mr. BARBER. I do not.

Mr. CARLIN. Was a stenographer present while the district attorney was making his remarks?

Mr. BARBER. Yes; he was.

Mr. CARLIN. Any other questions, Mr. Walsh?

Mr. NELSON. One more question: You stated that the district attorney read the law and made it clear. You considered this evidence for three or four months, did you not?

Mr. BARBER. Yes.

Mr. NELSON. You came to understand it pretty thoroughly, the nature of the offense of conspiring to restrain trade?

Mr. BARBER. Yes.

Mr. NELSON. Now, just tell me what you understand the law to be.

Mr. BARBER. I understand that any conspiracy that will result in the restraint of trade, either in the country itself or between this country and foreign countries, is a violation of the law. If I curtail a manufacturer, or a shipment, or interrupt the regular flow of business, that I am restraining trade.

Mr. NELSON. Would you be restraining trade if you joined a peace organization to go out and make speeches against the shipment of munitions of war?

Mr. BARBER. No; I would not personally, but if I conspired with other people, I would. Then it becomes a conspiracy.

Mr. NELSON. That is to say, if there were some one else who was doing that and happened to be in the same society with you or in some room with you, that you would consider him a part of the conspiracy?

Mr. BARBER. Yes; I believe if a society voted for any actions that would restrain trade they ought to be stopped.

Mr. NELSON. If they voted in effect that they did not believe in the shipments of munitions of war to foreign countries, that it is wrong?

Mr. BARBER. Oh, no; that is not a conspiracy to stop it. I would say that was only expressing an opinion that it ought to be stopped. It is not an actual operation.

Mr. NELSON. What would you consider a direct violation? Give me an illustration.

Mr. BARBER. I will. If they call strikes. If they spend money or efforts—that is, the combined efforts of several members of a society cause a strike, I should say that was in direct violation of this section of the law.

Mr. NELSON. And if you were a grand juror and found that that had been done, you think that you would be justified in indicting any one of that society for the conspiracy?

Mr. BARBER. I certainly do.

Mr. NELSON. Then, why did you omit Mr. Kramer from the elect?

Mr. BARBER. I indicted the conspirators of the society.

Mr. NELSON. How?

Mr. BARBER. I indicted as far as possible those people of which I did receive evidence they had conspired.

Mr. NELSON. That had participated in an attempt to direct a strike?

Mr. BARBER. Had participated in the conspiracy.

Mr. NELSON. I am trying to get at your understanding of a conspiracy. Do you mean that just being in Washington or Chicago or New York and taking part in an action of a society, would be sufficient, or do you mean that going out to some manufacturing establishment and there urging a strike—is that what you have in mind?

Mr. BARBER. No; it is not. I explained what I had in my mind, that if a few people get together and conspire and pay for certain efforts that they are active conspirators.

Mr. NELSON. Use some other word than the word conspire.

Mr. BARBER. I have used that, sir.

Mr. NELSON. Well, what?

Mr. BARBER. Plan. If a number of men plan.

Mr. NELSON. Plan to go out and start a strike?

Mr. BARBER. Plan and organize an effort—make an effort. I will use the word effort—to form a strike, that they are conspiring to restrain trade.

Mr. CARLIN. Is that what the district attorney advised you was the law?

Mr. BARBER. No; I think that is my own interpretation.

Mr. CARLIN. The district attorney did not give you any such advice as that, did he?

Mr. BARBER. No; he only made clear the law.

Mr. CARLIN. Then you think the definition you have given to a conspiracy—do you think that would apply to a labor organization?

Mr. BARBER. I do not see the application of it.

Mr. CARLIN. Neither do I. That is why I am asking you about it. In other words, you think particular gentlemen who are members of a labor organization, if they plan to go out on a strike and—plan to bring about a strike, would be guilty of a conspiracy under the Sherman law and you would vote to indict them?

Mr. BARBER. No; I do not know as to that. That is the business of a labor society which is permitted to exist.

Mr. CARLIN. Would not the same thing be true of a peace council?

Mr. BARBER. They have a grievance which they handled, I might say, personally; but when their men get together for their own purposes and form strikes, which are not for the purpose of the labor organization—doing it independently—that, I would call that simply a conspiracy.

Mr. CARLIN. Do you mean to say there was testimony before you to show that the peace council and its officers, including Mr. Buchanan, was conspiring to bring about strikes at industrial factories in this country?

Mr. BARBER. Am I supposed to give evidence that was given in the grand jury?

Mr. CARLIN. You are supposed to answer the questions that are asked you. We will be very careful and only ask you such questions as we think proper. Now, do I understand you to say that there was evidence before this grand jury to convince you that there was a con-

spiracy existing between these gentlemen to prevent the operating of industrial concerns in this country?

Mr. BARBER. I do; exactly that, sir.

Mr. CARLIN. Did the evidence indicate that this was upon their own motion, or at the request of others?

Mr. BARBER. At the motion of the people that we indicted, you mean?

Mr. CARLIN. Yes.

Mr. BARBER. Apparently it was of their own operation. I don't know what the others—it was their own conspiracy.

Mr. CARLIN. There was not any evidence showing that they were doing this at the instance of somebody else, was there?

Mr. BARBER. Well, just what do you mean by that? We tried to include everybody that we thought was in the conspiracy. I can go no further than that. On the evidence we did include everybody that our evidence covered. I mean, that is what I wish to say.

Mr. CARLIN. Did you know that the officers, during the time that Mr. Buchanan was connected with this peace council, were all trade-unionists?

Mr. BARBER. No; I knew they were not, to the best of my recollection. There was evidence——

Mr. CARLIN. Do you know what officer was not?

Mr. BARBER. I do not think either Schulteis or Martin was.

Mr. CARLIN. They were not officers? Were Martin or Schulteis officers of the peace council?

Mr. BARBER. They were very active in it. I forget whether they were actually officers or not.

Mr. CARLIN. Was the impression made on your mind that they were officers of the peace council?

Mr. BARBER. I can not answer that. I do not remember.

Mr. NELSON. Now, as a matter of fact, did you consider who were officers of the peace council?

Mr. BARBER. Did I consider who?

Mr. NELSON. Did you take that into consideration, who were officers of the peace council?

Mr. BARBER. Not specially—I don't think so, specially.

Mr. NELSON. Then you did not go over the list of officers of the peace council?

Mr. BARBER. I don't remember. I heard them all from time to time—what they were—during the presentation of the evidence.

Mr. NELSON. You indicted some members of the peace council and not other members of the peace council?

Mr. BARBER. I indicted members of the peace council against whom we had evidence, as I said before.

Mr. NELSON. Now, in discussing the nature of the offense of conspiracy by Mr. Marshall, did he indicate in his discussion what a man had to do to be guilty of conspiracy?

Mr. BARBER. I do not remember whether Mr. Marshall made that statement, but either Mr. Marshall or his assistant answered a question relative to just what constituted conspiracy. We wanted to be very clear on it.

Mr. NELSON. In your deliberations, did you not take up specific men to consider whether or not they had been guilty of conspiracy, or did you act with reference to them generally?

Mr. BARBER. Well, I will answer that by stating that it was made so clear for our consideration what men were to be indicted—what they had done individually—I suppose you might say that they were taken up from time to time.

Mr. NELSON. Made clear by Mr. Marshall and his assistant?

Mr. BARBER. Made clear by the evidence, sir.

Mr. NELSON. That they presented?

Mr. BARBER. That they presented—their witnesses.

Mr. NELSON. And their comment on it?

Mr. BARBER. Their comment on it was very general. The evidence only was what we could consider. As I say, we had been in session on the thing for three months and it was gone over. As the individual witnesses came, what evidence they had to give against certain people was given very clearly, and that means taking them up.

Mr. NELSON. Let me put that question perhaps more clearly: Did you not consider that Mr. Kramer and Mr. Straube were actual members of the peace council?

Mr. BARBER. I do not remember.

Mr. NELSON. If so, why did you not indict them?

Mr. BARBER. Because we had no evidence that they did anything.

Mr. NELSON. You, then, sought to find specific facts in each instance that led directly to an investigation—

Mr. BARBER (interposing). We sought to find the conspirators, and I think we did. If anyone was not—

Mr. NELSON. I will put this question: Did you actually find the fact that Mr. Buchanan had done something other than that which Mr. Kramer or Mr. Straube had done in this matter?

Mr. BARBER. Yes; we must have.

Mr. NELSON. Do you recollect yourself when you indicted a Member of Congress that he had done something that set him apart from Mr. Straube and Mr. Kramer?

Mr. BARBER. Yes. Yes, sir; exactly. You must remember, sir, that we were considering the operations of a whole lot of men, and out of that whole lot of men we had to select what we considered to be the conspirators. There were lots of men we did not indict that we were told about.

Mr. NELSON. Let me put this question: As a matter of fact, you did not indict Mr. Straube, did you?

Mr. BARBER. No.

Mr. NELSON. You did not indict Mr. Kramer?

Mr. BARBER. I do not remember now. I do not think so.

Mr. NELSON. Do you not remember whether you indicted Mr. Kramer?

Mr. BARBER. No; I do not. I forget the names.

Mr. NELSON. The gentleman who came from Chicago.

Mr. BARBER. Yes; I remember Mr. Kramer.

Mr. NELSON. How?

Mr. BARBER. I remember Mr. Kramer, but I can only guess at it. I would say, "No; we did not." I could not tell you all that we did indict, as a matter of fact.

Mr. NELSON. Did you consider Mr. Kramer's case separately?

Mr. BARBER. We considered his evidence as we did the others—the evidence against them. If you ask me that question, I will say

"Yes." I mean Mr. Kramer; it was not questioned whether we should find an indictment against him or not. We did not consider, apparently, Mr. Kramer sufficiently implicated as a conspirator to indict him as a conspirator.

Mr. NELSON. Did you consider Mr. Straube's case that same way?

Mr. BARBER. I don't know.

Mr. NELSON. Did you consider Mr. Buchanan's case separately?

Mr. BARBER. When you ask me about separately, you ask something I can not answer.

Mr. NELSON. I will put it another way: Is it your recollection now that a true bill was found against him as a sort of general thing covering generally the names mentioned with reference to this offense of impeding trade?

Mr. BARBER. I can only answer you by saying what I said before; that the indictment covered the conspirators.

Mr. NELSON. Here is what I want to know: Why did you select some and reject others?

Mr. BARBER. Because we thought some were guilty, sir, and others were not; we did not have sufficient evidence against them to indict them.

Mr. NELSON. If that be so, must you not have considered them separately?

Mr. BARBER. I can not take on the responsibility for the entire grand jury.

Mr. NELSON. How?

Mr. BARBER. I say I can not take on the responsibility for answering for the entire grand jury.

Mr. NELSON. I am only asking you for your own action.

Mr. BARBER. My action is apparent in my vote.

Mr. NELSON. Do not dodge.

Mr. BARBER. I am not dodging.

Mr. NELSON. Did you consider each man separately, or did you consider them all, generally.

Mr. BARBER. We returned a true bill against those we indicted.

Mr. NELSON. In your procedure, did you take them up one at a time, or more than one at a time, to determine their guilt, or did you return a true bill against a number of them together?

Mr. BARBER. Now I know what you mean; you mean at the actual time of the vote?

Mr. NELSON. Yes.

Mr. BARBER. No; we did not. We voted for these men all in a bunch.

Mr. NELSON. You voted for them all in a bunch?

Mr. BARBER. Yes. I did not understand your question before.

Mr. NELSON. Who presented the names all in a bunch?

Mr. BARBER. They were presented by the assistant district attorney.

Mr. NELSON. He gave you a list of names?

Mr. BARBER. Yes.

Mr. NELSON. And you voted upon those names?

Mr. BARBER. Yes.

Mr. NELSON. And Mr. Kramer and Mr. Straube were not in that bunch; is not that true?

Mr. BARBER. Yes; they could not have been in it.

Mr. NELSON. How?

Mr. BARBER. If they were not in the indictment, they could not have been in that bunch.

Mr. NELSON. I am asking you whether they were in that bunch?

Mr. BARBER. I am telling you to the best of my ability, as I recall the thing.

Mr. NELSON. Were they or were they not?

Mr. BARBER. They were not, as I say, unless they appear in that list, and then they were.

Mr. NELSON. Was Mr. Milton Snellings's name in that bunch?

Mr. BARBER. I don't remember.

Mr. NELSON. Was Rudolph Modest's name in that bunch?

Mr. BARBER. I don't remember; I don't think so.

Mr. NELSON. Was Jacob C. Taylor's name in that bunch?

Mr. BARBER. I am under the impression that it was, but I am not sure.

Mr. NELSON. Was Mr. L. P. Straube's name in that bunch?

Mr. BARBER. That is the one I said I didn't remember, but I don't think he was.

Mr. NELSON. Was Mr. Ernest Bohm's name in that bunch?

Mr. BARBER. I don't remember.

Mr. NELSON. Was Mr. Fred Lohn's name in that bunch?

Mr. BARBER. I don't remember.

Mr. NELSON. Was ex-Congressman H. Robert Fowler's name in that bunch?

Mr. BARBER. It was.

Mr. NELSON. Did you vote a true bill against every one in that bunch, or did you cull it out?

Mr. BARBER. I don't remember, sir.

Mr. NELSON. Do you not remember whether you, as a grand juror, acted on all of them, or whether you said, "This man is not guilty"?

Mr. BARBER. I don't remember.

Mr. NELSON. But, as a matter of fact, you did vote generally on the whole bunch?

Mr. BARBER. Yes.

Mr. CARLIN. Mr. Kramer was an officer of the association, was he not?

Mr. BARBER. I don't remember, sir. He was very active in it, but whether he held an office in it, I don't remember. You mean in the peace council?

Mr. CARLIN. Yes. Did you know at the time you found the indictment that you were not indicting some of the officers of the peace council?

Mr. BARBER. I believe so, because some of them were looked upon as being used by the people we did indict; had no direct hand in the affairs.

Mr. CARLIN. You looked upon them as tools of the others; is that what you mean?

Mr. BARBER. Well, you might say so. In one case, one of the officers withdrew because he did not think the peace council was a thing he ought to belong to.

Mr. CARLIN. Do you know which one that was? Do you recall which one that was?

Mr. BARBER. I can not recall his name. He was one of the delegates sent to those meeting in Washington. One of two. He was an

ironworker, or iron fabricator, or something of that sort—a structural man. I forget where he came from.

Mr. CARLIN. You did not intend to indict the structural man?

Mr. BARBER. We did not intend to indict a man that we did not think was implicated in the actual affair.

Mr. CARLIN. Your idea was that the structural man was not implicated—the man you designated as the structural man?

Mr. BARBER. No; not implicated at all.

Mr. CARLIN. Did you know that the only structural man connected with it was Buchanan?

Mr. BARBER. No; I am talking about a man who has a regular job, and works at erecting buildings.

Mr. CARLIN. You do not remember how many witnesses you had in this case, do you?

Mr. BARBER. No; I could not tell you. A good many of them.

Mr. CARLIN. But you do remember Gompers?

Mr. BARBER. Yes, sir.

Mr. CARLIN. And Morrison?

Mr. BARBER. Yes.

Mr. CARLIN. And this young lady stenographer from Washington?

Mr. BARBER. Yes.

Mr. CARLIN. And Kramer?

Mr. BARBER. Of Chicago?

Mr. CARLIN. Of Chicago.

Mr. BARBER. Yes.

Mr. CARLIN. And you think they gave sufficient evidence to justify you in indicting this other party?

Mr. BARBER. And the rest of them that testified I can remember vaguely, but not their names. There was an officer from Gompers's own office.

Mr. CARLIN. There was what?

Mr. BARBER. There was an employee, a secretary or something, from Gompers's own office—another one. There were some men from Washington. We went to the grand jury room for two days.

Mr. CARLIN. Do you mean Morrison?

Mr. BARBER. I do not think that was his name.

Mr. CARLIN. Do you mean some one in addition to Morrison?

Mr. BARBER. Is Morrison in the employ of Gompers's office? Is he in his office?

Mr. CARLIN. He is the secretary, I believe, of the American Federation of Labor. Is that the fact?

Mr. BUCHANAN. Yes.

Mr. BARBER. Yes, he was there; but there was another man also whom I remember distinctly, without remembering his name.

Mr. CARLIN. And they gave testimony against these gentlemen who have been indicted?

Mr. BARBER. Yes, sir.

Mr. CARLIN. Including Mr. Buchanan?

Mr. BARBER. They did.

Mr. CARLIN. Have you any other question, Mr. Walsh?

Mr. WALSH. None, Mr. Chairman.

Mr. CARLIN. If we should want to recall you, where can we find you, Mr. Barber?

Mr. BARBER. Will I give it to the stenographer?

Mr. GARD. Yes.

Mr. BARBER. J. D. Barber, 15 East Fortieth Street, care of F. B. Hoffman, New York City.

Mr. CARLIN. Frederick M. Stevens.

TESTIMONY OF MR. FREDERICK M. STEVENS.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Stevens, you have been sworn, have you?

Mr. STEVENS. Yes, sir.

Mr. CARLIN. Give your name, address, and occupation to the stenographer.

Mr. STEVENS. Frederick M. Stevens, 225 West End Avenue, New York City; manufacturer.

Mr. CARLIN. Did you give your address?

Mr. STEVENS. Yes; the house. Did you want the business?

Mr. CARLIN. Yes; give them both.

Mr. STEVENS. No. 87 Cliff Street.

Mr. CARLIN. Were you a member of the grand jury that found an indictment against Martin, Schulteis, and others?

Mr. STEVENS. Yes.

Mr. CARLIN. Can you tell us when you began the investigation of that case that led up to the indictment?

Mr. STEVENS. No; I could not. I can not remember any dates at all. I have been so used to tabulating and carding everything, that I could not remember it. I know we started in September, and I know we ran about 34 days, and stopped some time in December. I could tell you by going up to the bank. I know I drew a check, and I could tell you in that way.

Mr. CARLIN. Did you start this case in September?

Mr. STEVENS. No. The grand jury started in September.

Mr. CARLIN. Can you tell when you started the investigation of this case?

Mr. STEVENS. I could tell, if I could look up the records of the grand jury.

Mr. CARLIN. That is the only way you could tell?

Mr. STEVENS. Yes. I have not the slightest idea of it. For the last 20 years I have been trained to forget a thing as soon as I get it.

Mr. CARLIN. How often have you been a member of the grand jury?

Mr. STEVENS. The first time, in New York State.

Mr. CARLIN. Was the United States district attorney, Mr. Marshall, before the grand jury at this time?

Mr. STEVENS. I saw him there.

Mr. CARLIN. Did you hear him there?

Mr. STEVENS. I heard him there—speak.

Mr. CARLIN. You heard him speak?

Mr. STEVENS. I heard him talk.

Mr. CARLIN. What did he talk about?

Mr. STEVENS. My impression was, mostly, that I got from him, that he was trying to persuade us to stay in until they put in all the evidence. That is the impression I have now.

Mr. CARLIN. He was trying to persuade you to stay?

Mr. STEVENS. Yes; because we could, legally, have left after we had served a certain length of time, as I understood. We were not bound to stay there.

Mr. CARLIN. You do not think you could have left without the consent of the court, do you?

Mr. STEVENS. They told us we could. They gave us permission to leave after we had served about a month or two. Some did leave; one did leave.

Mr. CARLIN. You mean to say that the court told you, while you were considering this case, that you could leave?

Mr. STEVENS. No; but I got that impression.

Mr. CARLIN. From whom did you get that impression?

Mr. STEVENS. That we could withdraw, if our business was such that we could not stay there.

Mr. CARLIN. Without the consent of anybody?

Mr. STEVENS. Of course, we might have to vote on it in the grand jury. I do not know much about law.

Mr. CARLIN. You considered you could excuse yourself from service at any time by taking a vote on it amongst yourselves in the grand-jury room?

Mr. STEVENS. One did get off. I believe one did.

Mr. CARLIN. That one was sick, was he not?

Mr. STEVENS. I don't know. I never saw him after.

Mr. CARLIN. Did you excuse him there?

Mr. STEVENS. I don't know. I don't recollect the action taken at all. I was not interested in that.

Mr. CARLIN. Do you know for what these gentlemen were indicted?

Mr. STEVENS. For what?

Mr. CARLIN. Yes.

Mr. STEVENS. I suppose, as I understand it, it was for something in connection with the Sherman law; that is, in violation of the Sherman law.

Mr. CARLIN. The Sherman law has a great many provisions in it. Do you know what provision of the Sherman law they violated?

Mr. STEVENS. No; I do not, except that I did know at the time. I could not tell you now. It was read over, and it seemed to me it was proper to do it, and we voted on it. I don't recall it at all.

Mr. CARLIN. You say it was "read over." Who read it over to you?

Mr. STEVENS. I could not tell you whether Mr. Marshall read it, or Mr. Sarfaty read it over. One of them read it over.

Mr. CARLIN. You mean they read over the law to you?

Mr. STEVENS. Yes.

Mr. CARLIN. How often did they read the law over to you?

Mr. STEVENS. The number of times in all?

Mr. CARLIN. Yes.

Mr. STEVENS. As I recall it now, I should say about twice. I do not recollect more than twice.

Mr. CARLIN. Did they read it over the second time at the request of the grand jury?

Mr. STEVENS. I could not tell you that. I don't think so, but I couldn't say for certain.

Mr. CARLIN. You do not really remember anything that happened in the grand jury, do you?

Mr. STEVENS. No; not very much; not a great deal. I am a pretty old man, and I have my business on hand. We came up here when we had to, and we were instructed to forget everything and not to talk about it outside.

Mr. CARLIN. Who instructed you about that?

Mr. STEVENS. The first time, when we went on the jury.

Mr. CARLIN. Who instructed you about that?

Mr. STEVENS. I suppose the judge did. He sent us up. I understood that was part of the instructions.

Mr. CARLIN. Did the judge do it?

Mr. STEVENS. That the jury must be very careful not to talk about anything outside.

Mr. CARLIN. Did the judge do it?

Mr. STEVENS. Do what?

Mr. CARLIN. Did he instruct you——

Mr. STEVENS (interposing). That is the way I understood his instructions.

Mr. CARLIN. That is the way you understood his instructions?

Mr. STEVENS. Yes.

Mr. CARLIN. How old did you say you were?

Mr. STEVENS. I did not say. I said I was an old man. I will tell you, if you wish to know.

Mr. CARLIN. Yes; I would like to know what constitutes an old man in New York.

Mr. STEVENS. I am 65.

Mr. CARLIN. Do you remember, Mr. Stevens, whether or not Mr. Marshall attempted to persuade you as to what your duty was in this particular case?

Mr. STEVENS. I was not impressed that way at all in any way, shape, or manner.

Mr. CARLIN. What did you suppose he was doing there?

Mr. STEVENS. My impression of the whole case is—or was and is to-day—that they had got these facts together, and they brought them there and showed them—showed them up—presented them. and asked us to vote on them, and it seemed to me as though Mr. Marshall's idea was, in all the remarks he made, that he had done this work in his office at a great expense; spent a good deal of money to get this evidence; and they asked us to stay in the grand jury, even though we were staying over the time that we had to, until all this was finished up, so that they would not have to present it to another grand jury.

Mr. CARLIN. Then, you supposed that Mr. Marshall's presence before you was simply to invite you to extend your service?

Mr. STEVENS. He did not invite us; he asked us and persuaded us to, as much as he could, and as I understand it to-day, that a grand jury in this State, after they have served a certain length of time, and done a good deal of work, they will get another grand jury; but we took it up, and most of us agreed we would stay on, but we stayed longer than we expected we would when we first began, because I had no idea we were going to last so long.

Mr. CARLIN. Did you suppose Mr. Marshall had any other purpose in coming before you, except to request you to extend your service?

Mr. STEVENS. That was almost always the import of his remarks when he came down there. He may have said some other things, but I know that part of it. That he seemed to be most solicitous about.

Mr. CARLIN. How often was he before you?

Mr. STEVENS. I could not tell you that. I should say three or four times, but I could not tell. I do not recall anything of that kind. In my daily business I always go by the record of what happens.

Mr. CARLIN. Did the stenographer take down the proceedings in the grand-jury room?

Mr. STEVENS. I suppose so. He kept writing all the while.

Mr. CARLIN. Did he take down the remarks of Mr. Marshall?

Mr. STEVENS. I could not tell you that, because I did not read the reports.

Mr. CARLIN. Did you hear anybody direct him not to take them down?

Mr. STEVENS. No; I do not know of anything of that kind occurring at all; at least, I do not recall it now. I did not notice it, if it was.

Mr. CARLIN. You were present when those remarks were made, were you not?

Mr. STEVENS. Yes; I was there every day.

Mr. CARLIN. And the stenographer was present when the remarks were made?

Mr. STEVENS. I should think so.

Mr. CARLIN. And if anybody had told the stenographer not to take them down, would you not have heard it?

Mr. STEVENS. No; not necessarily. There is sometimes conversations going along, and you would not necessarily have heard that. You might have been talking to somebody else.

Mr. CARLIN. If you were not talking to somebody else, you would have heard it?

Mr. STEVENS. I think so; maybe.

Mr. CARLIN. You do not recall having heard that?

Mr. STEVENS. No; I never supposed for a moment that anything of that kind ever happened, and I do not now. If anybody should tell me that that had happened, I would hardly believe it.

Mr. CARLIN. Then, your supposition is that what Mr. Marshall said was taken down just like what everybody else said?

Mr. STEVENS. No; I would not say that, because I do not know what the procedure is in grand juries; I do not know whether they take down all the district attorney's remarks or not. That may be the rule; I do not know whether it is or not.

Mr. CARLIN. Did you know that the stenographer was there as the agent of the grand jury, and under your instructions?

Mr. STEVENS. I suppose so. I suppose so from the fact that the grand jury in New York is a law unto itself.

Mr. CARLIN. Then, you supposed he would take down what the grand jury told him to take down, and abstain from taking down that which the grand jury told him to abstain or refrain from taking down?

Mr. STEVENS. Yes; if they told him to, but I suppose in a case of that kind, he would not get any particular instructions at any particular time, because I suppose he would be governed by the procedure. I am not a lawyer, and I do not know about such matters.

Mr. CARLIN. Did you talk with Mr. Marshall about this case at any time during or since this session of the grand jury?

Mr. STEVENS. I have never spoken to him in my life.

Mr. CARLIN. Have you talked to anybody about what you have testified to here to-day?

Mr. STEVENS. No; I never spoke to anybody about it, except I told my wife I have got to come down.

Mr. CARLIN. Do you remember anything about the testimony before the grand jury?

Mr. STEVENS. Not in detail at all. The only impression I have is that this testimony was offered in this connection. The law was read, and it seemed to me at that time that that was an indictable case.

Mr. CARLIN. There were a number of officers of the peace council indicted, and a number of officers who were not indicted. Can you tell us why that was?

Mr. STEVENS. No; I could not.

Mr. CARLIN. You do not know?

Mr. STEVENS. I only know—the only connection that I had was that these names—and I can not remember the names now—all of them—were mentioned in connection with this matter that was brought up, and it was shown that they were connected with it.

Mr. CARLIN. You voted to find this indictment?

Mr. STEVENS. Yes.

Mr. CARLIN. Did you do that under the instructions of the district attorney, or as a matter of your own volition?

Mr. STEVENS. As a matter of our own volition. We had no instructions at all. It strikes me now, and did at that time, that the attitude of the district attorney was "We have done this work; we have brought you these facts and this information. What is your judgment in regard to it?" And then he went out.

Mr. CARLIN. What was your judgment? Why was it that you indicted some of the officers of the peace council and did not indict others?

Mr. STEVENS. I do not know the officers; that is, I did not draw the line anywhere; I do not know which is an officer and which is not.

Mr. CARLIN. Did you know at that time?

Mr. STEVENS. I might have, but I don't recollect now. I do not know that officer part of it. I did not have anything to do with that. They merely mentioned the names of the people.

Mr. CARLIN. Did you know that Mr. Buchanan was president of the peace council?

Mr. STEVENS. No; I did not. I do not know if I knew it at that time.

Mr. CARLIN. Did you not know that that was the gravamen of the offense that he was charged with, and which he is now charged with, and with which you voted to charge him?

Mr. STEVENS. That he was the president of it?

Mr. CARLIN. Yes.

Mr. STEVENS. I do not recollect about that. I understood that he was connected with it, but what his connection was, I could not tell you now. I could, if I could go over the testimony and refresh my memory. I know that name was connected with it.

Mr. CARLIN. Did you not include him in the bunch you voted to indict?

Mr. STEVENS. He was one of them, I believe.

Mr. CARLIN. Were those names all submitted to you at one time to vote on?

Mr. STEVENS. Yes; to vote on.

Mr. CARLIN. You did not vote on them separately?

Mr. STEVENS. Not that I recollect now; I do not think we did.

Mr. CARLIN. You voted on them in that bunch?

Mr. STEVENS. I think so.

Mr. CARLIN. Do you know who furnished you the bunch or gave you the names?

Mr. STEVENS. I think the district attorney must have read them off.

Mr. CARLIN. Then you indicted those whose names the district attorney read and did not indict those whose names he did not read?

Mr. STEVENS. No; we did not indict anybody that he did not read at that time.

Mr. CARLIN. Why not?

Mr. STEVENS. I was going to say, it seems to me you skipped a point there, that here we had just been through this case; we had these names fresh in our minds at that time; we knew them all, and the fact of his calling them off did not necessarily influence us any, because he mentioned them; we had those names in our minds, but that was a month or six weeks ago; that was in December; and I can not remember them all now. We had been through this case then, and these names had been mentioned in connection with this matter, and I think it is more than I can do to remember them all now.

Mr. CARLIN. These other names were mentioned also in connection with the matter?

Mr. STEVENS. Not in the same light it did not appear to us.

Mr. CARLIN. That is what I am driving at. These other names were mentioned in connection with the matter, and yet we find that those named in the bunch were indicted and those not named were not indicted, and I wanted your reason for that?

Mr. STEVENS. Because it did not appear to me, so far as I was personally concerned, that they were implicated.

Mr. CARLIN. It did not appear to you that they were implicated?

Mr. STEVENS. Not from the evidence given.

Mr. CARLIN. You remember the evidence, do you?

Mr. STEVENS. No; I do not; but I say from the evidence given me at that time it did not appear so to me.

Mr. CARLIN. But you remember that there was evidence?

Mr. STEVENS. Why, certainly. There could not help being evidence when they were bringing those people in and talking about it all the while—evidence one way or the other.

Mr. GARD. Do you remember the district attorney making a statement at the conclusion of the evidence which was submitted to you in this case or these cases?

Mr. STEVENS. No; not particularly.

Mr. GARD. What?

Mr. STEVENS. Except that here was the evidence, and asked for our vote on it.

Mr. GARD. After they got through with the evidence did he make a statement telling you briefly what the evidence was, and what was the law? Did he say something like that?

Mr. STEVENS. The district attorney, Mr. Marshall?

Mr. GARD. Yes.

Mr. STEVENS. Now, I do not recall that he did. He might have done it, and I not noticed it particularly.

Mr. GARD. Have you any recollection about it?

Mr. STEVENS. If you had asked me about that, or anything of that kind, I should have said that Mr. Sarfaty did.

Mr. GARD. That is what we are trying to find out. I am asking you whether you have any recollection that the United States District attorney, Mr. Marshall, did that himself, or made that statement?

Mr. STEVENS. Not that I recollect. I think that Mr. Sarfaty did.

Mr. GARD. Do you recollect that anybody made any such statement—such as that mentioned?

Mr. STEVENS. Would you call it a summing up? Is that what you mean?

Mr. GARD. Well, anything. Now that your memory has been refreshed, what do you say?

Mr. STEVENS. It seems to me he did say something about it, but not at any very great length.

Mr. GARD. Who?

Mr. STEVENS. Sarfaty.

Mr. GARD. Sarfaty?

Mr. STEVENS. Yes, but not any very great length.

Mr. GARD. Have you any recollection now of Mr. Marshall saying anything in conclusion, after the evidence was finished?

Mr. STEVENS. No; I do not recollect it.

Mr. GARD. You do not recollect it?

Mr. STEVENS. No; it was not important enough so that I would remember it.

Mr. GARD. If Mr. Sarfaty did say anything, do you remember whether in his statement he did include the names of the persons whom you indicted and placed in the indictment?

Mr. STEVENS. He would have mentioned those names naturally.

Mr. GARD. Not whether he would have mentioned them naturally, but whether he did do it?

Mr. STEVENS. No; I could not recollect now that he did, actually, but I should have said he did.

Mr. GARD. Did the district attorney's office furnish you a list of names, and say, "These are the men we want indicted, and these are the men you need not indict."

Mr. STEVENS. No such statement as that was made.

Mr. GARD. What?

Mr. STEVENS. I do not recall that statement; no.

Mr. GARD. Or anything like that, in effect or in substance?

Mr. STEVENS. No. As I said before we had those names in our minds at that time.

Mr. GARD. But what I want to know is whether anybody in the district attorney's office ever submitted to you a list of names together—say, Buchanan, Fowler, Monnett, and Lamar and others—and said, "Those are the names we want indictments on" or anything of that kind?

Mr. STEVENS. I do not recall anything of that kind.

Mr. GARD. Did either Mr. Marshall or Mr. Sarfaty say that?

Mr. STEVENS. No; I do not recollect anything of that kind occurring.

Mr. GARD. You did find, as you of course know, having participated in the indictment, against some seven or eight different persons?

Mr. STEVENS. You mean in connection with this particular case?

Mr. GARD. Yes.

Mr. STEVENS. You do not mean the other cases?

Mr. GARD. No. I am referring all the time to this one case.

Mr. STEVENS. I do not know how many names.

Mr. GARD. You found against Von Rintelen, and Lamar, and Monnett, and Fowler, and Taylor, and Schulteis, and Martin, and Buchanan; those are the names that I recall.

Mr. STEVENS. If they were the ones, they were; but I could not tell you unless I saw the record.

Mr. GARD. What I want to know is whether the district attorney's office or anybody representing that office, presented names to you and said, "We want these men indicted," or whether you had been carrying these names yourselves, as grand jurors, in your minds, after you had heard the testimony of the different witnesses?

Mr. STEVENS. Although I do not remember the action of that, I should say that was done, because I think that is always done; that is, the district attorney says, "Here is the evidence, and we want an indictment on these people."

Mr. NELSON. He asked the indictment of those people; is that it?

Mr. STEVENS. I think he did.

Mr. NELSON. Read that last answer.

(The answer was thereupon read aloud by the reporter as follows):

Although I do not remember the action of that, I should say that was done, because I think that is always done; that is, the district attorney says, "Here is the evidence, and we want an indictment on these people."

Mr. STEVENS. No; they do not say they want it; if we find it is proper.

Mr. GARD. Was there anything said in this case by the district attorney or assistant district attorney to the grand jurors, either in terms or in effect that "We want an indictment against these men"?

Mr. STEVENS. No; I can not say.

Mr. GARD. Calling to your attention, particularly, Mr. Buchanan?

Mr. STEVENS. I want to say that right plain, that I can not say, in all my connection with the grand jury—and this is my first offense—in all that time, I was not at any time impressed with the fact that they asked for an indictment; I was impressed with the fact that they said, "Here is the evidence. What is your opinion?" That is the idea I got. I may be wrong, but that is the way it struck me, individually.

Mr. GARD. Of course, I am very glad to know your ideas.

Mr. STEVENS. At no time did they turn around and ask anything of that kind.

Mr. GARD. What I particularly want is your recollection of what actually occurred.

Mr. STEVENS. As I say, that is my recollection of it.

Mr. GARD. Do you remember how it was that you arrived at the names of the persons that you did determine to indict?

Mr. STEVENS. I should say my evidence of their participation.

Mr. GARD. Was your determination to indict these men—the men that you did indict—in any way influenced by what the district attorney or the assistant district attorney said to you?

Mr. STEVENS. No.

Mr. GARD. Did you have any talk with any of the district attorney's force or the district attorney himself outside the grand-jury room relative to this case?

Mr. STEVENS. Not at all; never.

Mr. GARD. Do you remember anything being talked of in the grand-jury room about Representative Buchanan, of Illinois, having preferred charges of impeachment in the House of Representatives against Mr. Marshall?

Mr. STEVENS. I do not recollect any conversation of that kind; but it might have been.

Mr. GARD. When you came to find an indictment against Mr. Buchanan, was the fact that he had preferred charges of impeachment against Mr. Marshall mentioned at all?

Mr. STEVENS. Not that I recollect.

Mr. GARD. Was it discussed by anybody, either the district attorney or by anybody in the grand jury?

Mr. STEVENS. Not that I recollect.

Mr. CARLIN. I call your attention to the fact that you indicted 8 in a bunch, as you have designated, and that was handed to you by the district attorney. Suppose he had handed you 9 names, would they have been indicted—or 10 instead of 8?

Mr. STEVENS. I could not say about that, because the number—we did not take into consideration the number. All we went by was the memory we had of the names that had been brought up and, as far as I was concerned, where I connected it with what evidence had been put in.

Mr. CARLIN. You mean to say you just carried in your minds those names during the period of four months?

Mr. STEVENS. No; that is not right.

Mr. CARLIN. These particular eight names?

Mr. STEVENS. That is not hardly a fair question, when the thing did not come up until nearly or pretty nearly the middle of the time.

Mr. CARLIN. From the time it did come up until the time you indicted them, did you carry those names in your mind?

Mr. STEVENS. Only a short while ago I answered that question by saying this evidence had gradually come in, so that up to about the time we voted we had those names fresh in our minds at that time, but I could not tell you them now.

Mr. CARLIN. There were a number of other names upon which you did not vote. Why was it you did not vote upon those names and find not a true bill?

Mr. STEVENS. Because it did not appear that they were connected with the case we had on hand.

Mr. CARLIN. Then you did not vote not to find a true bill against them? You just did not vote at all?

Mr. STEVENS. I did not know that they ever did vote not to find a true bill. They just stopped voting.

Mr. CARLIN. Is there anybody against whom you did not find a true bill?

Mr. STEVENS. In connection with this matter?

Mr. CARLIN. In connection with this matter, or any other matter, while you were on the grand jury?

Mr. STEVENS. Yes; while I was on the grand jury there were one or two against whom we did not find a true bill.

Mr. CARLIN. How many?

Mr. STEVENS. I could not tell you. I remember one case, in connection with a bank here.

Mr. CARLIN. What case was that?

Mr. STEVENS. That was in connection with the Irving Bank, but I can not tell you. What was that bank they took over?

Mr. CARLIN. You knew you were indicting one or two of the officers of Labor's Peace Council, did you not?

Mr. STEVENS. Yes; I suppose we did.

Mr. CARLIN. You knew there were five or six whom you were not indicting, did you not?

Mr. STEVENS. No; I did not.

Mr. CARLIN. How was it you did not keep their names in your mind when they were before you?

Mr. STEVENS. I did not at that time, and I have no knowledge now of the number of officers that the peace council has or did have.

Mr. CARLIN. Can you tell us why the treasurer of that peace council was not indicted?

Mr. STEVENS. I do not know who the treasurer was. I have not any idea; no.

Mr. CARLIN. Did you vote not to indict him?

Mr. STEVENS. Not that I recollect. I have no recollection of it.

Mr. CARLIN. Can you tell us why Mr. Kramer was not indicted?

Mr. STEVENS. No; I can not.

Mr. CARLIN. Did you vote not to indict him?

Mr. STEVENS. I do not recollect that the case was brought up.

Mr. CARLIN. Had other names been handed you by the district attorney when you did take a vote, do you think it is likely they would also have been indicted?

Mr. STEVENS. I could not tell you about that; not now.

Mr. CARLIN. Do you think it is likely that you would have voted to indict them had their names been handed up by the district attorney?

Mr. STEVENS. I could not tell that. I do not know how that would come up.

Mr. NELSON. Did you strike out any name from the list of those handed up?

Mr. STEVENS. No.

Mr. NELSON. Did you add any to it?

Mr. STEVENS. Strike them out? No; I did not.

Mr. NELSON. You did not change that list?

Mr. STEVENS. I did not. Whether anybody else did I do not know. I did not notice.

Mr. NELSON. Did you change the list at all, either adding or striking out?

Mr. STEVENS. I did not.

Mr. NELSON. The true bill was voted against them, as handed up?

Mr. STEVENS. Yes.

Mr. NELSON. How?

Mr. STEVENS. As I understand it; yes.

Mr. CARLIN. I wanted to ask you if the indictment against Mr. Buchanan and Mr. Taylor was as the result of their labors in connection with the peace council?

Mr. STEVENS. Why, not if you took their labors as a whole; I do not think they would, because there might have been some things we would not know of.

Mr. CARLIN. Take them as a whole.

Mr. STEVENS. No; but take those matters that we took into consideration.

Mr. CARLIN. Were those matters that related to their official positions in labor's peace council?

Mr. STEVENS. No; they related to this matter that we took into consideration. I do not know what their other duties were. They may have been hiring a hall, or something of that kind.

Mr. CARLIN. But you did consider them as officers of this association, did you not?

Mr. STEVENS. We did, in a way, I think; although I do not know what office they had. I suppose they were the people who ran it, just as the board of directors runs a concern.

Mr. CARLIN. Did you not understand that Mr. Buchanan was president of that association?

Mr. STEVENS. I do not know. I know it about that time, or soon after. I know he was connected with it.

Mr. CARLIN. When these names were handed to you for final vote, you never added a name to the number, nor subtracted one from the number?

Mr. STEVENS. No; we did not.

Mr. CARLIN. You took it just as the district attorney handed it to you?

Mr. STEVENS. Yes.

Mr. NELSON. These questions have been submitted to the committee: Were you present every day that the Buchanan case was considered?

Mr. STEVENS. Yes, sir.

Mr. NELSON. You believed and considered it your duty to follow the law as given you by the district attorney?

Mr. STEVENS. Yes.

Mr. NELSON. Do you know what a conspiracy is?

Mr. STEVENS. No; I do not believe I do—not legally.

Mr. NELSON. Give me an idea of what you understand the offense of conspiracy consists?

Mr. STEVENS. I do not believe I could, unless I should sit down and write on it and chew on it quite a little. I am a college-bred man, but I can not do that.

Mr. NELSON. At present you have no idea of what a conspiracy consists?

Mr. STEVENS. Oh, yes; I have some idea.

Mr. NELSON. It is very hazy in your mind?

Mr. STEVENS. Not particularly.

Mr. NELSON. Then, can you not give us just a little idea?

Mr. STEVENS. Why, no; you know what I could do and what I could not do. I am a mechanical engineer.

Mr. NELSON. Just try to define what a conspiracy is, as you understand it—your conception of it?

Mr. STEVENS. Why, I don't know. I should have to go to the dictionary. If I could get hold of a dictionary I could tell very quickly.

Mr. NELSON. Is it very hazy in your mind?

Mr. STEVENS. Of course it is; I do not have anything in mind like that.

Mr. NELSON. In fact, you had to rely on the district attorney for a definition of "conspiracy"?

Mr. STEVENS. Why, certainly.

Mr. NELSON. And you took his word?

Mr. STEVENS. I suppose so.

Mr. NELSON. And that is why you voted for the bunch to be indicted, because you thought he knew better than you did?

Mr. STEVENS. No; we thought that the law he mentioned there had been broken.

Mr. NELSON. And you thought he had about gotten the right bunch in that list?

Mr. STEVENS. We did not take him into consideration; we took the evidence.

Mr. NELSON. How many times did Mr. Marshall address the grand jury?

Mr. STEVENS. That I can not tell you.

Mr. NELSON. More than once?

Mr. STEVENS. Oh, yes; more than once; more than twice, I should think; I could not tell you how many times.

Mr. NELSON. Did Mr. Marshall discuss the weight of the evidence with the jury?

Mr. STEVENS. Not that I recollect.

Mr. NELSON. Is it a fact that some of the grand jurors were absent at different times from jury service?

Mr. STEVENS. Not to my knowledge. That would be a matter of record. I would have to look at the record. I did not notice who was there.

Mr. NELSON. You have no recollection of anyone being absent?

Mr. STEVENS. No, sir.

Mr. NELSON. Were you absent at any time?

Mr. STEVENS. No, sir; I was there every day.

Mr. NELSON. Did anyone at any time inform you of your duty as a grand juror?

Mr. STEVENS. Why, yes; Judge Hough, was it not? He told us what our duties were.

Mr. NELSON. At the close or at the beginning?

Mr. STEVENS. At the beginning, when we first started in.

Mr. NELSON. What did you consider your duty as a grand juror to be?

Mr. STEVENS. Gracious, that would take me half an hour. Why, to take into consideration what evidence was brought in there, and to send out for any evidence or witnesses that we were amind, and to arrive at, as near as we could, possibly, from the evidence we had, what would be our opinion in regard to any matter that was brought up.

Mr. CARLIN. Mr. Walsh, is there any other question you would like to ask the witness, or have the committee ask the witness?

Mr. WALSH. None, whatever.

Mr. GARD. You may be excused, Mr. Stevens, until we ask for you.

Mr. CARLIN. The committee will stand at recess, now, until 2 o'clock.

(Whereupon, at 1.15 o'clock p. m., the subcommittee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The subcommittee reconvened at 2.18 o'clock p. m.

Mr. CARLIN. The committee will come to order.

TESTIMONY OF MR. ARTHUR WADE.

(The witness was duly sworn.)

Mr. GARD. Will you give your name, please, and business address?

Mr. WADE. Arthur Wade, 56 Liberty Street.

Mr. GARD. What is your occupation, Mr. Wade?

Mr. WADE. Real estate broker.

Mr. GARD. Were you a member of the so-called September grand jury?

Mr. WADE. I was.

Mr. GARD. Did you serve during the entire time of service of that grand jury?

Mr. WADE. I did.

Mr. GARD. Had you had any previous experience upon grand juries?

Mr. WADE. No.

Mr. GARD. This was the first time you had been a member of a grand jury?

Mr. WADE. Yes.

Mr. GARD. Do you remember when the session of the grand jury began?

Mr. WADE. The 1st of September—well, a day or two after the 1st. One moment; you are questioning me. I want to ask you a few questions. I am a layman and don't know anything about the law. When we were drawn on that grand jury we took an oath not to divulge any secrets or anything that transpired in that room. Now, then, you are not asking me to break my oath when you question me?

Mr. GARD. No, sir.

Mr. WADE. I just wanted to know. I am asking for information.

Mr. GARD. Of course, we understand that the oath was administered to you—the charge was given to you by the judge. That is probably what you refer to.

Mr. WADE. Yes. We all took our oaths to it.

Mr. GARD. Oaths to what?

Mr. WADE. That we would not divulge anything that transpired in that room.

Mr. GARD. Who administered such an oath?

Mr. WADE. The clerk.

Mr. GARD. What clerk?

Mr. WADE. Larry is his name, I believe.

Mr. GARD. Leary?

Mr. WADE. Leary. I am perfectly willing to answer questions.

Mr. GARD. Certainly. We are very frank to tell you that this is the committee sent by the authority of the American Congress, and it is not our privilege to inquire what the testimony was before the grand jury but merely to inquire upon matters which were brought out by impeachment proceedings against Mr. Marshall, United States district attorney.

Mr. WADE. Yes; but the questions I heard you ask here this morning of these jurymen that came here previous to me seemed to me cut in on that oath. For instance, who testified and what he testified to, thus and so.

Mr. GARD. We would not call upon you to give testimony. I am very frank to say to you that if you do not care to answer any question, you may so inform the committee.

Mr. WADE. I am perfectly willing to answer questions, but I want to know where I am at, that is all.

Mr. GARD. I think we will get along all right.

Mr. CARLIN. I will state to the witness that while we can compel you to answer any questions we desire—

Mr. WADE. After I have taken an oath not to divulge?

Mr. CARLIN. That oath did not mean that you should not go upon the stand as a witness before a proper tribunal to give your own testimony as to the questions that are asked you, but if at any time you object to any questions being asked you, the committee will pass on them and determine whether you want to answer.

Mr. GARD. Your oath was—as I recall the usual oath—that you will not disclose what happened in the grand jury room, unless called upon in a court of competent jurisdiction to make a disclosure.

Mr. WADE. I don't remember that last part.

Mr. GARD. But, at any rate, I do not apprehend that we will have any trouble.

Mr. WADE. No; go ahead—time is precious.

Mr. GARD. Do you remember when you first began to consider the case which finally resulted in the indictment of Von Rintelen, Lamar, Buchanan, Fowle, and Monet? I speak of them because the names are all together.

Mr. WADE. Well, we began on Lamar about the last or middle of September. That was on the passport case.

Mr. GARD. Von Rintelen, you mean?

Mr. WADE. Yes; I mean Von Rintelen.

Mr. GARD. You said Lamar. Which do you mean?

Mr. WADE. I did not mean that.

Mr. GARD. You mean Von Rintelen?

Mr. WADE. Yes; Von Rintelen and Meloy. And then, from that, we went at the various phases of the cases that led up to Lamar and the money, and then these men's names were brought in the last of October or the first of November, I should say around there.

Mr. GARD. I will ask you—and this is purely a question of time—when was it that any consideration was given by your grand jury to the evidence concerning Congressman Buchanan? About what time did you first consider that?

Mr. WADE. I should think around the 1st of November.

Mr. GARD. Do you know the United States district attorney, Mr. Marshall?

Mr. WADE. Not any more than seeing him in the room there.

Mr. GARD. Can you tell me how many cases you had during the time you served as a grand juror—how many different cases?

Mr. WADE. From the 1st of September?

Mr. GARD. Yes.

Mr. WADE. No; I could not. I suppose 10 or 15.

Mr. GARD. Can you tell me how many indictments you returned—how many separate indictments?

Mr. WADE. No; I could not. There was one or two cases that we would not indict on.

Mr. GARD. About how long a time did your grand jury give to the investigation of the original charges against Von Rintelin—that is the so-called peace-party matter, I believe—and to matters that grew out of or developed from that case? About how long a time did you give to the consideration of such evidence?

Mr. WADE. As I say, I should think that first came up in the latter part of October or at least in October—middle part of October—that it came up. We worked through September on most of the other cases. Around October 1 that matter came up.

Mr. GARD. Did you have any knowledge, while you were sitting as a member of the grand jury, of the fact that Congressman Buchanan had preferred charges of impeachment against District Attorney Marshall?

Mr. WADE. Only what I saw in the paper.

Mr. GARD. Did you see it in the paper?

Mr. WADE. Yes.

Mr. GARD. Did you discuss that matter with Mr. Marshall at any time?

Mr. WADE. No.

Mr. GARD. Did you discuss it with Mr. Saferty, his assistant?

Mr. WADE. No.

Mr. GARD. Did you discuss it with anybody in the United States district attorney's office?

Mr. WADE. No.

Mr. GARD. Did you discuss it in your grand-jury room?

Mr. WADE. I spoke to the man who sat next to me, that is all.

Mr. GARD. Can you tell us who that was?

Mr. WADE. I am trying to think of his name. I think his name was Deacon.

Mr. GARD. Deacon?

Mr. WADE. I think so.

Mr. GARD. Was there any informal discussion among members of the grand jury about the fact that Congressman Buchanan had publicly preferred charges against Mr. Marshall?

Mr. WADE. Not that I heard.

Mr. GARD. Was there anything said about that; what way they were voting, if they did vote, upon the question of determining whether an indictment was to be presented against Mr. Buchanan or not?

Mr. WADE. No.

Mr. GARD. Was there anything said by—I suspect you were present when Mr. Marshall made his statement, were you not?

Mr. WADE. You mean just before we found the indictment?

Mr. GARD. Before the indictment was found.

Mr. WADE. Yes.

Mr. GARD. He did make such a statement, did he?

Mr. WADE. What statement?

Mr. GARD. At the conclusion of the evidence did Mr. Marshall make a statement of what the evidence was and what the law was relative thereto?

Mr. WADE. He read the law to us; yes.

Mr. GARD. Did Mr. Saferty make a statement, too?

Mr. WADE. He reviewed the evidence. We asked him to.

Mr. GARD. Mr. Saferty did that?

Mr. WADE. Yes.

Mr. GARD. That is what I am trying to get at. What did Mr. Marshall do?

Mr. WADE. He read the law in regard to the Sherman Act, and then Mr. Saferty took up—he retired, as I remember—no; he sat down; he did not retire; and Mr. Saferty read the evidence—a great deal of the evidence we had had. We asked him to.

Mr. GARD. He read it?

Mr. WADE. Yes.

Mr. GARD. You mean he read it from the transcribed notes of the stenographer?

Mr. WADE. I suppose so.

Mr. GARD. He read it to you to refresh your recollection?

Mr. WADE. Yes; it was a long time.

Mr. GARD. How was it that you arrived at the names of persons who would be indicted by your grand jury?

Mr. WADE. Why, through evidence that we heard before us of the various witnesses.

Mr. GARD. Was there any statement by District Attorney Marshall or anybody in his office, giving you any certain number of names, and asking that the men on this list be indicted upon this charge of conspiracy?

Mr. WADE. Yes.

Mr. GARD. There was?

Mr. WADE. Yes.

Mr. GARD. What was said in that connection?

Mr. WADE. After we read his evidence, he asked the indictment of a certain group of names.

Mr. GARD. He asked the indictment of them?

Mr. WADE. Yes.

Mr. GARD. Now, just give me, instead of that conclusion, your recollection of what he said to the grand jury.

Mr. WADE. Oh, I could not give you that. I can not recollect that.

Mr. GARD. Just on that one subject.

Mr. WADE. He read the evidence and then he simply asked for the indictment of these various names, and that was all, and then retired.

Mr. GARD. Asked for the indictment of the names that he read?

Mr. WADE. Yes.

Mr. GARD. Do you recall whether all of those names were indicted?

Mr. WADE. They all were.

Mr. GARD. Did you take a separate vote on the names, or vote on them as an entirety?

Mr. WADE. Entirety.

Mr. GARD. The entire group of names that were submitted, were they submitted by Mr. Marshall or Mr. Sarfaty?

Mr. WADE. Mr. Sarfaty.

Mr. GARD. That entire group of names were voted on, and it was determined to indict them?

Mr. WADE. Yes.

Mr. GARD. And that you say was done by Sarfaty?

Mr. WADE. Yes, sir.

Mr. GARD. Did you ever have any talk with Marshall or Sarfaty outside of the grand jury room—in their private offices—as to what should be done about these men?

Mr. WADE. No.

Mr. GARD. Was it ever discussed with you by any of these men, that Congressman Buchanan had preferred charges against Mr. Marshall and that, therefore, he should be included in this list of persons indicted?

Mr. WADE. I don't get that. What is that first?

Mr. GARD. Was it ever discussed with you, or was it ever told you, that Congressman Buchanan had preferred charges against Marshall, and that, therefore, Buchanan should be included in the list of those persons indicted?

Mr. WADE. No.

Mr. GARD. Nothing of that kind?

Mr. WADE. No.

Mr. NELSON. You seem to have a pretty good memory. When did you commence to consider the doings of the peace council—about what time; that is, how long before you had been considering von Rintelin or after?

Mr. WADE. I think that came up in November.

Mr. NELSON. And you began in September?

Mr. WADE. Yes.

Mr. NELSON. And the indictment was found about when?

Mr. WADE. The indictment was found just before Christmas—a day or two before Christmas.

Mr. NELSON. The last part of November?

Mr. WADE. Last part of December.

Mr. NELSON. But you were considering the peace council about the last of November?

Mr. WADE. No; I think it was about the beginning.

Mr. NELSON. Now, Mr. Milton Snellings was vice president of that organization, was he not?

Mr. WADE. I don't remember. I believe he was.

Mr. NELSON. What led you to choose the president and not choose the vice president in making the indictment?

Mr. WADE. Simply on the evidence.

Mr. NELSON. Did you notice that Mr. Snelling's name was not in the list handed in by Mr. Sarfaty?

Mr. WADE. Yes.

Mr. NELSON. Was there any discussion with reference to that name?

Mr. WADE. No.

Mr. NELSON. You are sure that the list just contained the required number and no more?

Mr. WADE. Yes, as I remember, absolutely.

Mr. NELSON. Now, is it not a fact that you were largely guided by the district attorney in selecting the list of those that were indicted?

Mr. WADE. Why, yes, we were, because we had had evidence on this matter from various witnesses, and we could not get away from it. Naturally, we were.

Mr. NELSON. But you had evidence of Mr. Snelling, also?

Mr. WADE. No; we did not get much evidence on Snelling.

Mr. NELSON. I would imply that you had some, then. Is that true?

Mr. WADE. As I remember, very little.

Mr. CARLIN. Mr. Walsh, have you any questions you desire to ask this witness?

Mr. WALSH. Yes.

Mr. GARD. You can ask him yourself if you want to.

Mr. WALSH. Did Mr. Marshall at any time when before the grand jury examine any witnesses himself?

Mr. WADE. Yes.

Mr. WALSH. How many witnesses did he examine; can you tell?

Mr. WADE. No.

Mr. WALSH. Who was it called on Mr. Sarfaty to make a résumé of the evidence?

Mr. WADE. I think I was one.

Mr. WALSH. You asked him to do that?

Mr. WADE. I think so.

Mr. WALSH. Who was it that did most of the examining of witnesses that appeared before the grand jury?

Mr. WADE. Saferty.

Mr. WALSH. He appeared to be the counsel in charge, did he not?

Mr. WADE. Yes.

Mr. WALSH. How many times did Mr. Marshall appear before the grand jury?

Mr. WADE. From time to time. I could not say how many.

Mr. WALSH. As many as half a dozen?

Mr. WADE. From the beginning—do you mean from September?

Mr. WALSH. Yes.

Mr. WADE. Yes; I should say so.

Mr. WALSH. How many times did he address the jury and make remarks to them?

Mr. WADE. Well, how do you mean; in what way?

Mr. WALSH. How many times did he say anything of any kind to the grand jury?

Mr. WADE. To the grand jury?

Mr. WALSH. Yes.

Mr. WADE. He never spoke unless he was addressed by the grand jury.

Mr. WALSH. Did you not say that he did make an address to the grand jury?

Mr. WADE. No; I said that he read the law to the grand jury just before we found the indictments. This was the last day.

Mr. WALSH. And did he make some remarks in connection with the reading of the law?

Mr. WADE. No.

Mr. WALSH. Did not say anything, except to read the law from a law book?

Mr. WADE. That is all, and some questions that were asked him in regard to the law.

Mr. WALSH. You took the law from him as he read it, did you not?

Mr. WADE. Yes.

Mr. WALSH. Did any remark or any statements that Mr. Marshall made to the grand jury aid you in coming to the conclusion you did?

Mr. WADE. None whatever.

Mr. WALSH. That is all.

Mr. GARD. Had this question of who was to be indicted been under discussion before the list was handed in by Mr. Sarfaty?

Mr. WADE. No.

Mr. GARD. There had been no discussion of that?

Mr. WADE. No.

Mr. GARD. You just ratified the list that he gave the jury?

Mr. WADE. Yes, sir; we were satisfied of their guilt, and found the indictment.

Mr. NELSON. Will you describe what you understood this offense of conspiracy under the Sherman law to be on the part of Mr. Buchanan?

Mr. WADE. I do not know as I can give you word for word the Sherman law.

Mr. NELSON. I do not ask for that. I want you to give me a general statement of your conception of the nature of the offense.

Mr. WADE. Of conspiracy?

Mr. NELSON. Yes.

Mr. WADE. Against trade with the allied countries—lawful trade. A conspiracy to blow up ammunition plants and call strikes and various matters like that, which I understood is against the law.

Mr. NELSON. Let me ask you this question: Supposing that I had become a member of a peace organization and had made some speeches in Washington, outside of Congress, against the sale of munitions of war to foreign countries, and was associated with others in that movement. Public sentiment against this practice. Would you regard that as coming under the head of conspiracy.

Mr. WADE. I would, if I had the evidence against you that I heard against Buchanan.

Mr. NELSON. Well, you did not answer my question.

Mr. WADE. Yes; I answered your question.

Mr. NELSON. If I had done that, and that only, would you consider me guilty of conspiring?

Mr. WADE. That is the only way I can answer it.

Mr. NELSON. Read the question to him.

Mr. WADE. I get your question; but, for instance, if you were a member of this so-called peace council and we had evidence against you, making us believe that you were crooked, I would certainly think that you were.

Mr. NELSON. Of course you would; but now I will ask the question again. Supposing that I had done no more—and this is a supposition—I just want to get your idea—

Mr. WADE. Well, I will answer you, that if you had done no more I would say no.

Mr. NELSON. That is, than to make speeches?

Mr. WADE. Yes.

Mr. NELSON. But supposing I had addressed labor unions in New York and other places, but had gone no further than simply to state that this is a bad practice and we ought not to send munitions of war abroad. Would you then think that I had been guilty of conspiring?

Mr. WADE. No.

Mr. NELSON. Do you think it is necessary that there be an overt act of that kind, to constitute conspiracy?

Mr. WADE. Yes.

Mr. NELSON. Could you give me an idea of what you think would be required under this criminal practice, in the nature of an overt act?

Mr. WADE. Well, if I thought that you were receiving money for these speeches, to incite these men to riot, etc., I would say that was conspiracy.

Mr. NELSON. Now, supposing that John Smith, a very benevolent gentleman, interested in preventing the sale of munitions, contributed \$5,000 to me, and I went out and made those speeches to labor unions and generally throughout the country as a part of an organization—call it peace society—but I received the \$5,000, and was campaigning with that money, speaking to the labor organizations, would you regard that as a violation of the law?

Mr. WADE. In speaking to the labor organizations, are you instigating them to strike and blow up ammunition plants, etc.?

Mr. NELSON. No; I am generally speaking against the practice.

Mr. WADE. Now, if you received that \$5,000 for that purpose and knew what it was for—

Mr. NELSON. Now, just answer my question. Would you regard that as violating the law that you have in mind if I received the money, went out—came here to New York and made a speech to a labor union against the traffic in war munitions, and went no further than that; would you say that would make me guilty of conspiracy under the law?

Mr. WADE. Yes; if you knew what the \$5,000 was paid to you for. If you didn't, no.

Mr. NELSON. Well, now, will you explain to me how that \$5,000 has anything to do with the restraint of trade?

Mr. WADE. Well, if you spoke to these trade unions and incited them to blow up munition plants, etc.—

Mr. NELSON. I did not say that. Stick to the point. If I just made speeches against the sale of munitions abroad?

Mr. WADE. It would depend upon what your speeches were.

Mr. NELSON. Well, I am speaking against the practice of our country being engaged in selling munitions abroad.

Mr. WADE. If you did not know what the \$5,000 was for, excepting for that purpose, I would say you were not guilty, but if you knew the \$5,000 was for that purpose and you incited them to riots, etc., I would say you were guilty. That is my construction of it.

Mr. NELSON. You have gone outside of my question. I did not say anything about inciting to riots now. I am gradually finding out what is in your mind as a grand juror with reference to the offense of conspiracy.

Mr. WADE. If you said nothing in your speech excepting the prohibition of shipment of munitions, you are not guilty.

Mr. NELSON. Under your conception?

Mr. WADE. Yes.

Mr. NELSON. Now, you think it was necessary to prove further, if I were the man, that I had directly spoken to labor unions urging them to strike?

Mr. WADE. Yes.

Mr. NELSON. That is your conception?

Mr. WADE. Yes. Am I right or not? I don't know.

Mr. NELSON. Was there evidence before the grand jury tending to show that Buchanan engaged in inciting strikes?

Mr. WADE. I refuse to answer that question. That is direct evidence.

Mr. NELSON. I say, was there evidence, tending to show? I will say to you that the chief of the bureau of inquiry and chief of detectives was asked that question and answered it, and he was answering under advice of the Attorney General.

Mr. WADE. Well, then, I will say there was.

Mr. CARLIN. Do you know whether the stenographer took down the statements made before the grand jury or the district attorney?

Mr. WADE. No; he was not in the room. You mean at the close of the case when they asked for the indictment?

Mr. CARLIN. I mean when the district attorney was present and made the statement to the grand jury.

Mr. WADE. At the end of the case?

Mr. CARLIN. I don't know whether it was at the end.

Mr. WADE. Yes; when they asked for the indictment. You mean when the district attorney was reading the law to us?

Mr. CARLIN. I mean when Mr. Marshall was present and on his feet and reading the law to you.

Mr. WADE. No; the stenographer had left the room.

Mr. CARLIN. How came he to leave the room?

Mr. WADE. Had no business in there. The case was ended.

Mr. CARLIN. Was he excused by the grand jury?

Mr. WADE. No; he simply walked out, as I remember.

Mr. CARLIN. Was he present every time that Mr. Marshall was present?

Mr. WADE. No; he was always there.

Mr. CARLIN. Well, at the other times, then, when he was present, when Mr. Marshall was speaking, do you know whether he took down then what Mr. Marshall said?

Mr. WADE. I could not say; but I imagine he did; always.

Mr. CARLIN. Mr. Walsh, any further questions?

Mr. WALSH. Do I understand then that the case was ended when Mr. Marshall made his remarks to the grand jury?

Mr. WADE. Yes; practically ended when he read the Sherman law.

Mr. WALSH. The giving of evidence had ended?

Mr. WADE. Yes, sir.

Mr. WALSH. Now, was there any evidence before the grand jury at any time that there were any riots anywhere in connection with any manufactures or munition plants?

Mr. WADE. Yes.

Mr. WALSH. Now, you speak in your testimony of determining the guilt of the parties indicted. Do you consider it as part of your duty to determine the innocence or guilt of the persons whose names are submitted to you?

Mr. WADE. Yes.

Mr. CARLIN. We will excuse you.

TESTIMONY OF MR. WILLIAM A. WITHERELL.

(The witness was duly sworn.)

Mr. NELSON. Give your name and business address, please.

Mr. WITHERELL. William A. Witherell, 93 West One hundred and third Street.

Mr. NELSON. Were you a member of the September grand jury that indicted Von Rintelin, Buchanan, and others?

Mr. WITHERELL. Yes, sir.

Mr. NELSON. When did the grand jury take up the question of the evidence as to the activities of the so-called officers of the peace council?

Mr. WITHERELL. I should think about the 1st of November. It is hard work to remember, of course, you know, exactly.

Mr. NELSON. Mr. Buchanan's name was brought in about that time, or subsequently?

Mr. WITHERELL. About that time—probably a little after that.

Mr. NELSON. Now, you naturally were interested in the indictment or the offense charged against a Member of Congress, were you not?

Mr. WITHERELL. Certainly was.

Mr. NELSON. Did you note distinctly before you voted for a true bill against Mr. Buchanan, the time that Mr. Buchanan acted as president of the peace council?

Mr. WITHERELL. Well, that was developed in the case.

Mr. NELSON. Well, now, when was he elected president of the peace council?

Mr. WITHERELL. I could not say.

Mr. NELSON. When did he resign?

Mr. WITHERELL. There was testimony there submitted, if I remember right, when he resigned, but I can not call it to mind now.

Mr. NELSON. Did you have in mind distinctly the time he resigned, before you voted a true bill against him?

Mr. WITHERELL. Well, it is hard for me to remember that now.

Mr. NELSON. Well, let me put this question to you: You voted generally as to the guilt or innocence of these gentlemen, as they were put together in that group, did you not?

Mr. WITHERELL. Well, we had some talk—some of us jurymen talked about taking the different ones up individually; then we came to the conclusion we would indict them in a group, just as they were. We would not go into the details, because they all worked in together.

Mr. NELSON. Now, then, how could the district attorney know what was in your mind, so as to select the exact group?

Mr. WITHERELL. Well, it is hard for me to know what the district attorney comes to his conclusions from.

Mr. NELSON. Did you do anything else than take the group that he gave you?

Mr. WITHERELL. Oh, yes; we looked over—at least I did—I looked at other testimony in regard to some other men.

Mr. NELSON. Did you suggest that any of the other men should be included?

Mr. WITHERELL. No; I don't think I did.

Mr. NELSON. Did you suggest that anybody should be stricken from the list?

Mr. WITHERELL. No.

Mr. NELSON. Then, as a matter of fact, you did vote upon the list as presented to you, did you not?

Mr. WITHERELL. I did.

Mr. NELSON. Now, did you carefully discriminate as to when any one of these indicted persons became a member of the peace council, and when he resigned it?

Mr. WITHERELL. I have no question about it but what I did at that time, but to say now just what I done then, it is impossible.

Mr. NELSON. Did Mr. Marshall just take up the law book and read that little section of the code with reference to the Sherman law? Is that all he did?

Mr. WITHERELL. I think there was a juror asked him a question.

Mr. NELSON. And all he did was to read the law itself, and not to comment on the law at all?

Mr. WITHERELL. I don't remember him making any comment.

Mr. NELSON. That would take about a minute, would it not?

Mr. WITHERELL. Possibly; depends on how much he would have to say about it.

Mr. NELSON. What did he say about it?

Mr. WITHERELL. I don't know as he said anything.

Mr. NELSON. He might have said something about it.

Mr. WITHERELL. He might, but now it is pretty hard work to tell. I remember a juror asking something or other in regard to the law, and he answered.

Mr. NELSON. Did he not explain to you the nature of a conspiracy?

Mr. WITHERELL. As the law read.

Mr. NELSON. He not only read the law on conspiracy, but he went into details as to the offense?

Mr. WITHERELL. I don't remember anything like that.

Mr. NELSON. Well, do you remember that he did not?

Mr. WITHERELL. My impression is he did not, as I remember it.

Mr. NELSON. Did Sarfaty speak after or before Marshall?

Mr. WITHERELL. After. Yes; commenced reading the law and Sarfaty finished up. I was thinking first whether Mr. Marshall said anything. No; that is right.

Mr. NELSON. Now, did Sarfaty carefully read from the typewritten statement?

Mr. WITHERELL. I should judge it was, from the looks of it.

Mr. NELSON. Did he read his own?

Mr. WITHERELL. And as he went along it tallied up pretty well, I know, as I remember the case, as I heard the testimony.

Mr. NELSON. Was it a typewritten statement he read from?

Mr. WITHERELL. I should judge it was.

Mr. NELSON. Well, he had a paper in his hand?

Mr. WITHERELL. I should judge it was typewritten.

Mr. NELSON. You are sure he read from a paper and did not speak offhand?

Mr. WITHERELL. I am pretty sure it was a paper.

Mr. NELSON. Are you very positive about that?

Mr. WITHERELL. I am pretty sure he read from the paper.

Mr. NELSON. Now, did the paper read like this, question and answer, question and answer, or was it an argument, a statement, a kind of a summary of the whole thing?

Mr. WITHERELL. No; question and statement.

Mr. NELSON. Question and answer?

Mr. WITHERELL. Yes.

Mr. NELSON. In other words, you are positive that he read nothing from the testimony, from the beginning of this case?

Mr. WITHERELL. I feel so.

Mr. NELSON. Did he leave out any? You covered three or four months, did you not?

Mr. WITHERELL. Not on that particular case, you know. Parts of two months. We practically used the best part of November and up into December.

Mr. NELSON. Did it take him about an hour?

Mr. WITHERELL. Really I could not tell you now. I know it was quite a while.

Mr. NELSON. Well, what is quite a while—a whole afternoon?

Mr. WITHERELL. No; I should imagine it was an hour, something better than an hour. That is my best judgment, as I remember now.

Mr. NELSON. Do you recall the jurors asking him to read that testimony, or did he do it of his own volition?

Mr. WITHERELL. Pretty hard for me to remember now.

Mr. NELSON. You don't remember anyone asking that it be reviewed or read?

Mr. WITHERELL. I hardly think he done it from his own volition. That is my impression.

Mr. NELSON. Did Mr. Marshall say before you sat down that Mr. Sarfaty would review the testimony?

Mr. WITHERELL. Yes; he done that.

Mr. NELSON. Marshall said that?

Mr. WITHERELL. Yes.

Mr. NELSON. And then Mr. Sarfaty got up and read the testimony?

Mr. WITHERELL. Read the testimony, that is right.

Mr. NELSON. Was the stenographer in the room when Sarfaty was reviewing the testimony?

Mr. WITHERELL. Really, I do not call to mind.

Mr. NELSON. Were Mr. Marshall, Mr. Sarfaty, and the stenographer all three in the room at one time?

Mr. WITHERELL. You mean at this particular time?

Mr. NELSON. At any particular time when you were in session?

Mr. WITHERELL. Oh, yes.

Mr. NELSON. The three at one time?

Mr. WITHERELL. Oh, yes.

Mr. NELSON. What do you understand the crime of conspiracy to consist of?

Mr. WITHERELL. Well, I should put it several men joined together to accomplish any purpose in violation of the law.

Mr. NELSON. Violation of the Sherman law would include what other item?

Mr. WITHERELL. I ain't no lawyer.

Mr. NELSON. Let me put this question to you: Did Mr. Marshall or Mr. Sarfaty explain what restraint of trade was to you—to the grand jury—did he explain the nature of that offense of restraint of trade?

Mr. WITHERELL. I rather think he did, is my best remembrance.

Mr. NELSON. Well, then, if he did, he did more than merely read the law to you?

Mr. WITHERELL. Well, it is pretty hard work to remember that.

Mr. NELSON. Well, now, what do you understand to be the offense, restraint of trade? What does that consist of?

Mr. WITHERELL. Any thing that you might do to interfere—transactions between any individuals, corporations, and so on, that conflicts with the law. I should place it that way.

Mr. NELSON. To make a speech against shipments of munitions?

Mr. WITHERELL. If a man by his speech tended to instigate people to break the law, I should say it was conspiracy.

Mr. NELSON. Was there any evidence that Mr. Buchanan made a speech to induce people to break the law?

Mr. WITHERELL. Well, you are getting down too fine. I don't remember whether there was or not.

Mr. NELSON. Did you consider Mr. Buchanan's case separately and vote upon it separately?

Mr. WITHERELL. Oh, no; I told you before we voted on it in a group.

Mr. NELSON. Well, now, if he had not been in the group as handed in by the district attorney, do you think that you would have moved that he be included in the group?

Mr. WITHERELL. Yes, sir; I certainly do. As I told you, some of them talked about taking up each separate case. Then we agreed to take them all together, as they were all mixed in.

Mr. NELSON. Did Mr. Marshall make it plain that Mr. Buchanan ought to be included in the group, or did Mr. Sarfaty?

Mr. WITHERELL. No; they did not particularize anyone.

Mr. NELSON. Why do you think that you would have added Mr. Buchanan's name to the group?

Mr. WITHERELL. Well, I certainly would. If there was sufficient evidence there to satisfy my mind to indict him, I certainly would have brought his name in, or any other man.

Mr. CARLIN. Was there sufficient evidence there?

Mr. WITHERELL. Sufficient to me.

Mr. CARLIN. Do you want to ask any questions, Mr. Walsh?

Mr. WALSH. Yes. Mr. Witherell, have you discussed with any person during the noon recess the testimony you were to give before this committee?

Mr. WITHERELL. No, sir; as a matter of fact I only saw one and did not say two words together.

Mr. WALSH. Did you talk with somebody about the testimony you were to give or the testimony that had been given here this morning?

Mr. WITHERELL. No, sir.

Mr. WALSH. You did not discuss anything at all about the case during the noon recess with anybody?

Mr. WITHERELL. With anybody.

Mr. WALSH. Now, how often have you served on the grand jury?

Mr. WITHERELL. This is my first time on the grand jury.

Mr. WALSH. And when you were called to serve on the grand jury were you informed at any time by anybody as to what your duties were to consist of?

Mr. WITHERELL. Only as the judge charged us.

Mr. WALSH. Do I understand that you understood that the judge charged you concerning your duties as a grand juror; is that right?

Mr. WITHERELL. That is, explaining what our duties were.

Mr. WALSH. After the judge charged you, did you understand that you were to consider the guilt or innocence of all persons that were called to your attention?

Mr. WITHERELL. No; I did not take it that way. I took it that our duty was to investigate, and then if we found sufficient cause for a man to be held for trial, to indict him and hold him.

Mr. WALSH. That you understood was to be the nature and extent of your investigation?

Mr. WITHERELL. Yes.

Mr. WALSH. You wanted to treat everybody alike, did you not?

Mr. WITHERELL. Yes.

Mr. WALSH. You wanted to treat everybody fairly?

Mr. WITHERELL. Yes.

Mr. WALSH. And to do your full duty, as you understood it?

Mr. WITHERELL. Yes.

Mr. WALSH. Did you understand it was your duty to believe the evidence that was produced before you?

Mr. WITHERELL. No; I was not compelled to do it; I was to use my best judgment as to whether I thought they were testifying honestly or not.

Mr. WALSH. Did you believe all the evidence that was produced before you?

Mr. WITHERELL. No; some of it I did not.

Mr. WALSH. You are quite sure, are you, now, that you did not?

Mr. WITHERELL. Yes.

Mr. WALSH. Is it a fact that you failed to indict anybody because of any evidence that you disbelieved?

Mr. WITHERELL. Put that again, please.

Mr. WALSH. Did you fail to indict any person because of any evidence that you disbelieved?

Mr. WITHERELL. Not in that case, because—no; I would not say I did.

Mr. WALSH. Who handled the production of evidence before the grand jury?

Mr. WITHERELL. Mr. Sarfaty.

Mr. WALSH. Mr. Sarfaty?

Mr. WITHERELL. As a rule. Mr. Marshall, I think it was twice he examined witnesses.

Mr. WALSH. Mr. Marshall upon two occasions examined witnesses?

Mr. WITHERELL. I think it was twice.

Mr. WALSH. And Mr. Sarfaty did most of the work?

Mr. WITHERELL. Yes.

Mr. WALSH. How many days did you sit from September up to the time you concluded your labors? How many days a week did you sit?

Mr. WITHERELL. We made breaks there; sometimes we adjourned for two weeks.

Mr. WALSH. So that the evidence was not continuous from day to day?

Mr. WITHERELL. Oh, no.

Mr. WALSH. And there was a recess of as much as two weeks at one time?

Mr. WITHERELL. Yes. Practically the whole four months—in the four months we actually put in 39 days.

Mr. WALSH. If you wanted to treat everyone fairly, and treat everyone alike, why did you not return an indictment against Mr. Kramer, the treasurer of the National Peace Council?

Mr. WITHERELL. Because there was not sufficient testimony to satisfy me.

Mr. WALSH. Is that the only reason?

Mr. WITHERELL. Yes.

Mr. WALSH. Is it not a fact that you were not asked to return an indictment against him?

Mr. WITHERELL. That may be, too.

Mr. WALSH. Is it not a fact that you returned an indictment against every man that you were asked to return an indictment against?

Mr. WITHERELL. In this particular case we did; but in other cases we did not.

Mr. WALSH. Mr. Witherell, you used this language in answering one of the gentlemen of the committee; that you came to the conclusion—meaning the grand jury came to the conclusion—to indict them in a group?

Mr. WITHERELL. That is right.

Mr. WALSH. Now, I want to know when you came to that conclusion?

Mr. WITHERELL. What do you mean? Some particular time in the month?

Mr. WALSH. Yes; at what particular time in reference to your deliberations?

Mr. WITHERELL. That was on the close of the term; when we got through.

Mr. WALSH. After you heard the evidence?

Mr. WITHERELL. Sure.

Mr. WALSH. And before you passed on the question of whether or not you would indict them at all?

Mr. WITHERELL. Why, no. We had some talk, as I have stated before, where we talked, taking up individually each man, and it was agreed to indict them in a group.

Mr. WALSH. It was agreed to indict them in a group?

Mr. WITHERELL. Yes.

Mr. WALSH. That agreement was made before you indicted them?

Mr. WITHERELL. Before we indicted them.

Mr. WALSH. And in compliance with that agreement, you did indict them in a group?

Mr. WITHERELL. That is the idea exactly.

Mr. WALSH. I think that is all.

Mr. NELSON. Mr. Kramer was not treasurer. You are mistaken about that. Mr. Bohm was the treasurer.

Mr. WALSH. I thought he was the treasurer.

Mr. NELSON. No; Kramer was the vice president.

Mr. CARLIN. You will be excused, Mr. Witherell, until the committee may want you again. Leave your address with the clerk.

Those are all the witnesses we will examine here to-day. The committee will now go into executive session, and the sergeant at arms will please clear the court room.

(Whereupon, at 3.10 o'clock p. m., the subcommittee went into executive session.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
New York City, February 29, 1916.

The subcommittee met at 10.30 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson.

Mr. CARLIN. The committee will come to order. Mr. Clerk, just request the persons who are summoned as witnesses to retire from the court room. Just call their names.

(Thereupon Mr. Russell, the clerk, called the following names: Herman Oppenheimer, Benjamin Slade, Simon H. Kugel, Stewart Browne, Frank Moss, Salic Goodman, George I. Cohen, Mrs. George I. Cohen, David Slade, and Maxwell Slade.)

Mr. CARLIN. The sergeant at arms will call the first witness, Mr. Simon H. Kugel.

Mr. DAVID SLADE. Mr. Chairman, may I remain here? I am assisting Mr. Walsh in some matters here. Perhaps you will make an exception in my case?

Mr. CARLIN. Very well; you may remain.

TESTIMONY OF MR. SIMON H. KUGEL.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Kugel, state your age, and residence, and occupation.

Mr. KUGEL. I will be 38 years next March; I reside at 1758 Union Street, in the Borough of Brooklyn; I am an attorney at law; have been since June, 1900.

Mr. CARLIN. Were you ever indicted for an offense in the southern district of New York?

Mr. KUGEL. I was.

Mr. CARLIN. With what did that indictment charge you?

Mr. KUGEL. I was charged with conspiracy to conceal assets of a bankrupt.

Mr. CARLIN. When was that indictment found?

Mr. KUGEL. In December, 1913, I believe. I was formally arraigned in the first part of January, 1914.

Mr. CARLIN. Were you tried at that time?

Mr. KUGEL. I was tried in the month of March, 1914.

Mr. CARLIN. Who was the district attorney at that time?

Mr. KUGEL. Mr. Marshall—H. Snowden Marshall was the district attorney. The gentlemen in charge of the case—the deputies or assistants in charge of the case were Roger Wood and Samuel Hershenstein.

Mr. CARLIN. Who was district attorney at the time you were indicted?

Mr. KUGEL. H. Snowden Marshall.

Mr. CARLIN. Tell us the circumstances attending your indictment and trial.

Mr. KUGEL. In December, 1912, I was retained by the firm of Rogal & Brass, who were then engaged in the leather goods business in New York City. I was consulted by them with reference to their business affairs. I advised with them; I received a retainer in the latter part of December, and the first part, I think it was, on the 2d of January or 3d of January, 1913, a petition in bankruptcy was filed against them. I continued to act as their attorney, and advised with them from time to time and relied upon what they told me, which was, in substance, that it was an honest failure; that their standing was excellent with their creditors; they owed about \$40,000; they had been in business about 12 or 15 years, and that it would be an easy matter to effect a settlement; that they, personally, would bring about a settlement. We proceeded with the case until, oh, for a month or two, in trying to effect a settlement. During that time there were various examinations of the bankrupts under section 21-A. Later, I should judge in the month of April, one of the bankrupts was indicted for perjury—perjury committed during his examinations under section 21-A. A little before that time, I had learned of a concealment of assets from the bankrupts, and advised them to get another attorney, and, in fact, assisted them later to get—after the indictment—to retain the late Abraham Gruber as their attorney. I told them that I knew nothing about the criminal end of the law; I never practiced in the criminal courts, and Mr. Gruber continued to act as counsel in the criminal case, and then a settlement was effected with all the creditors; everybody was paid—a common-law settlement, not a bankruptcy settlement—and Mr. Gruber advised them that no legal perjury was committed, because immediately upon my advise, and before the indictment was handed down, and immediately upon my learning that they had testified to something that was not correct, I told them that if they—

Mr. CARLIN (interposing). You mean they had testified falsely?

Mr. KUGEL. Falsely; I told them that the first thing they must do if they wanted me to continue to do anything for them was to appear before the commissioner and correct their testimony, which they did. This indictment continued to hang over from March until about November. They were indicted in March or April, and in November some witnesses had been subpoenaed and I was informed that the district attorney's office was preparing the perjury case and, for that purpose, had subpoenaed witnesses. I was invited by Mr. Hershenstein to come in and see him with reference to the case. I called on Mr. Hershenstein and had an interview with him—an interview, perhaps, of about half an hour—in which I told him so far as I could without revealing or without saying anything that would have a tendency to break the confidence that I, as attorney, was bound to my client, and Mr. Hershenstein felt very much pleased with my frankness and willingness to help him so far as I could, and I told him—

Mr. CARLIN (interposing). Was this conference prior to your indictment?

Mr. KUGEL. Prior to my indictment.

Mr. CARLIN. How long after that was it before you were indicted?

Mr. KUGEL. I was indicted in, I think, the latter part of December. The indictment was handed down, and this was—this, I should say, was about the first part of December.

Mr. CARLIN. 1913?

Mr. KUGEL. 1913.

Mr. CARLIN. Was a trial had of your clients for perjury?

Mr. KUGEL. No.

Mr. CARLIN. That was never tried?

Mr. KUGEL. Never tried.

Mr. CARLIN. Why not?

Mr. KUGEL. From my information they were in course of a deal with the United States district attorney's office.

Mr. CARLIN. Did he enter a plea of guilty?

Mr. KUGEL. He entered a plea of guilty after my indictment.

Mr. CARLIN. After your indictment?

Mr. KUGEL. After my indictment—after he had testified.

Mr. CARLIN. What punishment was meted out to him?

Mr. KUGEL. He later—they later entered a plea of guilty to conspiracy also. They were also indicted for conspiracy.

Mr. CARLIN. Jointly with you?

Mr. KUGEL. Jointly with me, and they pleaded guilty to conspiracy and they were permitted to go, without bail, on both charges, and they continued without bail until long after my first trial, and during my first trial the counsel criticized the United States district attorney's office for permitting these people, who had pleaded guilty to both perjury and conspiracy, to go at large without even furnishing bail.

Mr. CARLIN. Who was your counsel?

Mr. KUGEL. Frank Moss.

Mr. CARLIN. Frank Moss?

Mr. KUGEL. Yes.

Mr. CARLIN. Were you tried?

Mr. KUGEL. Yes; I was tried.

Mr. CARLIN. What happened at your trial?

Mr. KUGEL. There was a disagreement.

Mr. CARLIN. Disagreement. Then what happened?

Mr. KUGEL. Then I was tried again and there was another disagreement. The disagreement in the first instance the jury stood 10 to 2 for 12 hours—from the first ballot on. This was information which was authentic, received from the jury, about which there is no question.

Mr. CARLIN. This is the second trial?

Mr. KUGEL. The first.

Mr. CARLIN. The first trial?

Mr. KUGEL. Yes; and at the second trial the jury stood 10 to 2 for 14 hours from the first ballot on.

Mr. GARD. Which way?

Mr. KUGEL. For acquittal in both instances.

Mr. CARLIN. After the second mistrial what happened to your indictment?

Mr. KUGEL. After the second mistrial my indictment was nolle.

Mr. CARLIN. By the district attorney?

Mr. KUGEL. By the district attorney: upon their motion, in which Mr. Hershenstein and Mr. Wood took occasion to file affidavits in this court. I do not know whether it is in justification of their conduct or whether for the purpose of continuing the general plan that, in their opinion, that I was guilty and all that stuff, which is a matter of record entirely uncalled for.

Mr. CARLIN. What happened to your clients?

Mr. KUGEL. My clients were sentenced to 30 days in the custody of the marshal.

Mr. CARLIN. Thirty days in the custody of the marshal?

Mr. KUGEL. Of the United States marshal.

Mr. CARLIN. Where did he keep them in custody?

Mr. KUGEL. I have not the slightest idea.

Mr. CARLIN. Who was the United States marshal?

Mr. KUGEL. I think Mr. Henkel was still the marshal at that time; either Marshal Henkel or Marshal McCarthy.

Mr. CARLIN. Who tried the first case against you?

Mr. KUGEL. Who was for the Government?

Mr. CARLIN. Who was the presiding judge?

Mr. KUGEL. Learned Hand; Judge Hand; and the second trial Judge Grubb, of Virginia or Georgia.

Mr. CARLIN. Did Judge Hand say anything about the credibility of the Government's witnesses in the first trial?

Mr. KUGEL. Yes; before the conclusion of the case the judge told counsel—told Mr. Moss that he never in his experience as a lawyer and also as a judge saw such liars, willful perjurers, as the Government's chief witnesses in this case—Mr. Rogal, Mr. Brass, Mrs. Rogal, and the entire Rogal family.

Mr. CARLIN. They were your clients, were they not?

Mr. KUGEL. My clients. And later, when he charged the jury, he charged them substantially to that effect, that if he were called upon to pass upon the credibility of the Government's witnesses he would not believe the chief witnesses for the Government—Mr. Rogal, Mr. Brass, and Mrs. Rogal.

Mr. CARLIN. After your first trial, or mistrial rather, did you have any communication with the district attorney's office or with Mr. Marshall direct?

Mr. KUGEL. My attorneys did; I think either Mr. Moss or Mr. Slade. Mr. Slade represented one of the defendants—one of the coconspirators or alleged coconspirators—the one that was acquitted in the first trial.

Mr. CARLIN. Which Mr. Slade?

Mr. KUGEL. Mr. Benjamin Slade represented Mr. Feldman, who was one of the alleged coconspirators, and he was acquitted at the first trial, and at the second trial I had Mr. Benjamin Slade assist in the trial of my case—assisting Mr. Moss.

Mr. CARLIN. Let me see if I understand this. You were indicted upon the testimony of your own clients?

Mr. KUGEL. Yes; I was indicted—I don't know—I was indicted upon the testimony of my own clients and the suspicions of Mr. Hershenstein and Mr. Woods.

Mr. CARLIN. But your own clients, after arranging for a plea of guilty and a slight sentence, as I understand this matter, appeared

before the grand jury, and upon their testimony an indictment was had against you?

Mr. KUGEL. Yes.

Mr. CARLIN. And they were the principal witnesses against you on the trial?

Mr. KUGEL. Yes, sir.

Mr. CARLIN. When the mistrial was had you communicated with Mr. Marshall?

Mr. KUGEL. Oh, yes; that is, my counsel communicated with Mr. Marshall and called his attention to a number of facts—of admitted facts—a number of matters that came out during the first trial which, in their judgment, as they put it, and in the judgment of any fair-minded man, would indicate that they were persecuting instead of prosecuting a man.

Mr. CARLIN. What did Mr. Marshall say to that?

Mr. KUGEL. I don't know. The second trial was the only answer that I got.

Mr. CARLIN. What is your complaint, if any, against Mr. Marshall?

Mr. KUGEL. Well, my complaint, if any—I have not any complaint against Mr. H. Snowden Marshall, personally. My only complaint, if he is to be chargeable with the conduct or misconduct of his assistants. I have a very serious and grievous complaint, because from the time of my first interview with Mr. Hershenstein, who, by the way, is a young man, who has never had any experience as a lawyer; he was a filing clerk in this office for a while, and then was promoted to assistant—to this job—and he was very pompous and very desirous of impressing upon my mind his extraordinary abilities. In the first interview he recited to me what he was going to do and what he did on a certain Carp case, which I afterwards learned he had nothing to do with; it was a bankruptcy case in which the Carps were convicted, and he cited that as an instance. He said, "You claim privilege as a lawyer. Look what we did to Aaron J. Levy in the Carp case—Judge Levy; we made him turn over the books, and we made him take water," and all that stuff. I told Mr. Hershenstein that I did not think that was the attitude to assume; that I had assumed that the district attorney's office wanted to get at the bottom of the case, and that I am just as anxious to get at the bottom of the case as you are, but if you assume that you are going to do things that have never been done before in the United States district attorney's office, you are at liberty; you can proceed. Later, he called me up on the phone and asked me to turn over certain books that I had in my possession.

I said that those books were now in the hands of counsel, Mr. Gruber, which was the fact, and that I could not turn the books over without consulting Mr. Gruber. He said he was going to send the United States marshal over to take the books. This was over the telephone. I said, "I would not do it, if I were you, because, in the first place, I haven't got the books, and, in the second place, I think I ought to have an opportunity to consult with Mr. Gruber about it." He said, "Maybe that is just as well. I will consult with my superior in the matter, too." I said "Very well." He said, "I will call you up," the next day and let me know about it. Next day I was served with a subpoena. Next day I called him up and I said,

"What do you mean by serving me with a subpoena? I was supposed to hear from you. You were supposed to let me know what your superior had to say." He said, "It does not make any difference. You come right over." And I came over, without the books.

Mr. CARLIN. Did you have a subpoena duces tecum?

Mr. KUGEL. A subpoena duces tecum, but I came without the books. He said, "Where are those books?" I said, "I told you that the books were in Mr. Gruber's office, in the last talk I had with you." He said, "I am going to take you before the judge for contempt." I said, "Look here, Mr. Hershenstein, in the first place, if you will look at your subpoena you have commanded me to produce the books of 'Rogal Bros.' instead of 'Rogal & Brass.'" I said, "That is not my reason for not producing the books, but if you are so strictly technical about taking me before the judge, because I was waiting for a message from you, I haven't any such clients as Rogal Bros.; I haven't any books belonging to Rogal Bros.," and he went way up in the air, and he said "Wait a few minutes," and he rushed in and got another subpoena, and then he said "You come here to the grand-jury room."

I came up to the grand-jury room, and I placed—I told the grand jury what my position was with respect to the books, and Mr. Hershenstein was extremely officious, and he ordered me out of the room, or he was dictating—I was questioned, and he was directing me or directing the stenographer "Don't take this down," or matters to that effect; and later he told me to go out of the room, and he remained in the room, and I came in, and he dictated a direction to the stenographer, directing me to produce the books; whereupon I produced the books; and later I learned that Mr. Rogal's attorney—Mr. Rogal's new attorney—was a Mr. Weinberger, of Paterson, N. J., and that this Mr. Weinberger was a roommate of Mr. Hershenstein, living with Mr. Hershenstein in New York City, and that this Mr. Weinberger had now succeeded Mr. Gruber as counsel, and was now the counsel for Rogal & Brass. Now, whether there is any connection between Weinberger, of Paterson, N. J., being retained by a man in New York City, with 24,000 lawyers, and being a roommate of Hershenstein, that is a matter for the committee to determine; I have my own opinion.

Mr. CARLIN. What happened to that particular case?

Mr. KUGEL. That is the case I am talking about.

Mr. CARLIN. Did Mr. Weinberger appear as counsel?

Mr. KUGEL. Mr. Weinberger appeared as counsel for Rogal & Brass in this plea of guilty, and had arranged for the plea of guilty, and had arranged for Rogal turning the tables on his lawyer and getting immunity, not alone for himself, but for his whole family, because it afterwards developed during the trial of my case—

Mr. CARLIN. They got immunity for themselves and put the matter up to you; is that it?

Mr. KUGEL. Put the matter up to me. And during another instance, which I think clearly shows the attitude or the agreement, during the first trial of my case, we showed to the court, and, incidentally, to the district attorney, by records in the banks, by the

deposit slips, and by the transcripts, and by the bankrupts' books, that five or six loans, carried as loans on the books of the bankrupts as bona fide loans which had been paid back, were, in truth and in fact, fake loans, manufactured loans which were created by Rogal taking the firm money, depositing the firm money to his own personal account, then drawing a firm check and crediting it as a loan to John Smith, for instance, and then, immediately before the bankruptcy, or two or three months before the bankruptcy, paying back this loan to John Smith, and this money being used by them personally, and they afterwards admitted—

Mr. CARLIN. You knew nothing about that when you filed the petition in bankruptcy?

Mr. KUGEL. Absolutely and unqualifiedly, nothing; except the fact that this was a case which was due entirely to conditions in the leather-goods business. About a year preceding the filing of the petition there was a strike in the leather-goods business; that was the story that my client told me his financial condition was due to; that he had lost a lot of money on strikes. That is Mr. Hershenstein's attitude throughout the entire case.

Mr. GARD. I understand you had no connection with Mr. Marshall, and your grievance is against Hershenstein and Woods?

Mr. KUGEL. My grievance is against Hershenstein and Woods. I had no connection with Mr. Marshall. I never talked to him about the case.

Mr. GARD. Your grievance is that Mr. Marshall's office, instead of stopping the trial, or stopping the continuation of the case after the first trial, when there was a disagreement, insisted on trying it again after being communicated with by your attorney?

Mr. KUGEL. Yes; and my grievance against Mr. Marshall is that he—that is, against his subordinates; of course, I suppose that is against Mr. Marshall—is that all these facts were ascertainable before the indictment; all these facts that I am now referring to with respect to—that Rogal was not in the district attorney's office for the purposes of telling the truth, but he was there for the purposes of protecting himself, getting himself and his family out of this scrape.

Mr. CARLIN. And he succeeded pretty well in doing that?

Mr. KUGEL. He succeeded very handsomely. I understand he was later pardoned. He was not satisfied with being let off under a sentence of 30 days in the custody of the United States marshal, but I am informed that somebody or some guardian angel got him a pardon, and he is now pardoned.

Mr. CARLIN. I want to ask you about the use of subpoenas in the district attorney's office, or the alleged misuse of subpoenas. What do you know about that?

Mr. KUGEL. I know that they subpoenaed everybody in my office. They made an effort to break into my office. They afterwards did. Mr. Hershenstein and the representative of the United States marshal's office—of the marshal, not the district attorney—Mr. Hershenstein and a representative of the United States marshal's office came over to 170 Broadway, the building that I was a tenant of, and said they wanted to get into my office; that they were—Mr. Hershenstein handed his card, and the United States marshal flashed his

badge, and they, coming from these two respective offices, wanted to get into my office to search for some papers; to get some papers out of my office.

Mr. CARLIN. Was that while your indictment was pending?

Mr. KUGEL. It was before my indictment was pending. That was while they were—

Mr. GARD (interposing). Who gave you this last information?

Mr. KUGEL. The superintendent of the building.

Mr. GARD. You do not know that personally?

Mr. KUGEL. No, I do not know it personally.

Mr. CARLIN. What prevented them from breaking in?

Mr. KUGEL. The superintendent of the building happens to be a man with a little blunt in him, and he said, "You can not get in; I don't care where you come from. If you have a court order, I will permit you to go in; if not, I will not let you in. We are here to protect the property of our tenants; we will not let you go in, unless you have a court order." That is the superintendent of 170 Broadway.

Mr. CARLIN. They did not come with an order?

Mr. KUGEL. They did not get in at that time, but later, within a week, I found the desk—my roll-top desk—pried open. I don't know who did it. I don't make any charges.

Mr. CARLIN. What do you know of the alleged practice of subpoenaing witnesses to appear before the grand jury, and then examining them privately in the district attorney's office?

Mr. KUGEL. They subpoenaed at least, to my knowledge, 10 witnesses, including my stenographer, my telephone operator—anybody that might—my partner—anybody that might possibly have anything to do or know anything about the case, was subpoenaed with a grand jury subpoena, and never taken before the grand jury; simply quizzed in the office; bullied, if I may use that expression.

Mr. CARLIN. Who were they quizzed by?

Mr. KUGEL. Hershenstein was the active one in the preparation of this case. Hershenstein was the fellow that prepared the case. For instance, at that time my father was ill at New Haven. I come from New Haven—living in New Haven at that time and my father was very ill, and they made him come to New York at the risk of his health. He died in March. It was about three months later, but they made that sick man come here and took him to Hershenstein's office, quizzed him, threatened him, and scared him—got nothing out of him.

Mr. CARLIN. What did they threaten him with?

Mr. KUGEL. Hershenstein said, "In the Karp case we sent them away, father and son. Now, we are going to do it in this case." They never took him before the grand-jury room. During the trial of my case, they subpoenaed the chief rabbi of Philadelphia, Rabbi Leventhal, whose daughter's wedding I attended, and on a certain day which the bankrupts claimed I was in New York, and which was afterwards proven by the hotel register of a hotel in Philadelphia that at the time that the bankrupt said he had an interview with me in my office, I and my entire family were registered at the hotel and attending a wedding of the daughter of this rabbi, Leventhal, to a cousin of mine. So during the trial of the case they subpoenaed this Leventhal, an elderly gentleman, a gentleman that commands the

respect and esteem of those that know him and those that don't know him, because of his position. Leventhal afterwards told me that Mr. Hershenstein called him a liar—abused him in such a manner that it was never heard of before.

Mr. CARLIN. Is Hershenstein now in the district attorney's office?

Mr. KUGEL. Yes; he is still there. That is, so far as the subpoenas were concerned. They subpoenaed the witnesses; examined them in the office.

Mr. CARLIN. Let me ask you, was that a regular subpoena, returnable to the grand jury, issued out of the clerk's office, or a request card issued by the district attorney from his office?

Mr. KUGEL. They were all regular grand-jury subpoenas which had a stamp on it, calling for the room—I think 83—a stamp containing those words, or words to that effect, "Please call at room 83."

Mr. CARLIN. Did you see the subpoenas?

Mr. KUGEL. Yes; I received them and still have them as souvenirs.

Mr. CARLIN. Did they state you were summoned before the grand jury, or you were requested to appear at the district attorney's office?

Mr. KUGEL. Oh, no; summoned before the grand jury in a matter now pending before the grand jury, in the matter of Rogal & Brass. That was the substance of the subpoena—the one I was served with and the others. None of them were any requests to call before the district attorney.

Mr. NELSON. I want to get this matter clear. Please formulate the charge or grievance that you have against Mr. Marshall's subordinates, as officials of the Government.

Mr. KUGEL. I think my grievance against Mr. Hershenstein is that he, for reasons only known to himself—my judgment is only for the purpose of holding down his job—

Mr. NELSON. Make it as brief as possible and formulate your charges.

Mr. KUGEL. Got hold of this Mr. Weinberger and sent him to the bankrupts and told the bankrupts—

Mr. NELSON. Pardon me.

Mr. KUGEL. I beg your pardon.

Mr. NELSON. Do not go into facts. State, generally, the grievance that you have, as an attorney against this subordinate of Mr. Marshall.

Mr. KUGEL. My grievance is that they suppressed evidence. They destroyed documentary evidence which was material, in so far as proving my innocence in the matter. They suborned perjury beyond a doubt. The records will show it, and I can give you an instance, if you want it.

Mr. CARLIN. I want to first get the general description of what they did, and then I will ask you some facts. Before we go into the facts, do you want to amplify that general charge? For instance, you have suggested that they terrorized the witnesses—misused the power of subpoenas.

Mr. KUGEL. Yes; I wish to add that.

Mr. NELSON. Anything else that you wish?

Mr. KUGEL. They closed their eyes to the truth. That was the bottom of it.

Mr. NELSON. Now, did you ever have any controversy with Mr. Hershenstein before this—any personal controversy?

Mr. KUGEL. Never; never met the man in my life.

Mr. NELSON. Now, you state, for instance, that you are going to give where they have suborned perjury; is that it?

Mr. KUGEL. Yes; during the first trial of my case.

Mr. NELSON. Make it as brief as possible, without bringing in too much outside matter.

Mr. KUGEL. I will try to. During the first trial of my case the witness Rogal testified that he had an interview with me at my office on the 2d day of January, 1914, at 10 o'clock in the morning, at which time he gave me a check for \$750, which I indorsed and gave back to him, which was subsequently cashed. That is his testimony, and he kept the money. In my defense already indicated, I showed by the hotel register that I was in Philadelphia at 12 o'clock noon, and by other witnesses that I was not to my office at all on that day. It was the day following New Year, and I left with my family direct from the house to the Hudson Terminal and to Philadelphia. At the second trial he changed the time.

Mr. NELSON. Who is he?

Mr. KUGEL. Rogal changed the time of this interview to an earlier hour, so as to allow me to be in my office and make the 10 o'clock train for Philadelphia and be at Philadelphia at 12 o'clock. This is a further instance.

Mr. NELSON. That was Mr. Rogal, was it?

Mr. KUGEL. Yes.

Mr. NELSON. Where does Hershenstein come in here? You charge him with suborning perjury.

Mr. KUGEL. There was a matter of certain telephone conversations that the Government claimed to be material in the trial of my case—out-of-town telephone conversations; three in number—one from Bridgeport. These telephone slips or alleged telephone conversations could not be admissible unless they were connected direct with me. During the trial of the case Rogal testified that he was in the office at 10 o'clock one morning when the conversation with Bridgeport was had. He testified that he was in my office on another day when a conversation from Hartford came in. Mrs. Brass testified that she was in my office during a conversation that came in from Albany, and on the first two instances that I, after I got through talking on the telephone, turned to them and told them the substance of the conversations, as a foundation for permitting these telephone conversations to be admissible as against me. They were these confidential accounts that I have referred to, that were made just as clear as crystal, that they were fake accounts. That was made clear during the first trial of the case. During the second trial of the case Mr. Woods, the assistant, would ask of Mr. Rogal, "Mr. Rogal, this loan to Eli Goldstein, being one of the fake accounts, was a perfectly honest, legitimate, and bona fide loan? Yes." And so throughout the loan with respect to all of the accounts, by which there could not be any question about their being false.

Mr. NELSON. This was done in open court?

Mr. KUGEL. Yes; in open court.

Mr. NELSON. And by examination?

Mr. KUGEL. By examination.

Mr. NELSON. Your charge, then, amounts to this, that he suggested certain answers?

Mr. KUGEL. That he asked certain questions, knowing the answers would be perjurious, and relying upon the fact that the bankrupt, having been assured he would be taken care of, would testify to anything that would be consistent with the Government's case.

Mr. NELSON. How do you know that he had that assurance that he would be taken care of? Do you simply infer that from the fact that he was not punished?

Mr. KUGEL. I infer that from the fact that they were not punished. I infer that from the fact that before Rogal had made a statement to the district attorney, preceding my indictment, Rogal had told me that he had made connections, whereby he and his family can get out clear in this matter, provided he involves me.

Mr. NELSON. He told you that?

Mr. KUGEL. Oh, yes; Rogal told me that.

Mr. NELSON. In the presence of anyone else?

Mr. KUGEL. Yes; in the presence of two persons.

Mr. NELSON. Who were they?

Mr. KUGEL. One of them was a Dr. Bailey.

Mr. NELSON. What are his initials?

Mr. KUGEL. John H. Bailey.

Mr. NELSON. What address; can you give it? Is he a resident of the city?

Mr. KUGEL. Yes; a resident of the city. He is in the telephone book.

Mr. NELSON. Who is the other person?

Mr. KUGEL. Mrs. Bailey, his wife. It was an interview had at Dr. Bailey's, which afterwards the bankrupt said was had at the suggestion of Mr. Weinberger, in which the whole matter was gone over, and he made this statement.

Mr. NELSON. Now, have you any other case in mind of the district attorney suborning perjury, of which you have knowledge?

Mr. KUGEL. Well, I suppose if I refer to my files in my case, or to the record—

Mr. NELSON. I do not care for that. Now, have you covered the facts that you have in mind, bearing on these charges already in your testimony?

Mr. KUGEL. You mean on the four charges that I enumerated?

Mr. NELSON. The general statement that you made of your grievance. Have you other facts that you have in mind that will sustain any of these charges?

Mr. KUGEL. Yes; the exhibits in the case—in my case. The record in the case. The general—I might say under the head of unfairness, as an instance.

Mr. NELSON. Have you any facts from your knowledge of other dealings outside of the open court, which would sustain these charges?

Mr. KUGEL. Yes; the intimidation of witnesses; the direct statements to witnesses, "We have got the goods on Kugel; now, you had better come out with it. We have got the goods on him. Kugel did this, Kugel did that, and you can not get away from it, and the best you can do is to get out of it."

Mr. NELSON. Conversations after subpoena?

Mr. KUGEL. Yes; conversations with witnesses.

Mr. NELSON. In room 83?

Mr. KUGEL. In room 83, in one case. In one case an expressman was subpoenaed, perhaps a dozen times, and every time he was told—he was threatened with, “We have got the goods on him. We have got the goods on Kugel. We are after him.”

Mr. NELSON. What was the name of this expressman?

Mr. KUGEL. Goodman.

Mr. NELSON. Who was the assistant district attorney?

Mr. KUGEL. Hershenstein and Woods, Hershenstein being the principal.

Mr. NELSON. Where do you get your knowledge of this?

Mr. KUGEL. From Mr. Goodman.

Mr. NELSON. From the expressman himself?

Mr. KUGEL. From the expressman; yes.

Mr. CARLIN. Are you practicing law now?

Mr. KUGEL. Yes.

Mr. CARLIN. Have you brought any bankruptcy proceedings, since your indictment?

Mr. KUGEL. No; I have not. No, I want to take that back. Yes, I have been in one case since my indictment.

Mr. CARLIN. You have brought one suit?

Mr. NELSON. Yes; I might say this: I never in my practice of 15 or 16 years—in my practice of 12 years here in this court I did not average more than two cases a year. I was never a bankruptcy lawyer.

Mr. CARLIN. Have not averaged that many since your indictment?

Mr. KUGEL. Have not averaged that many since my indictment, but I never did—

Mr. CARLIN. Who represented you?

Mr. KUGEL. In what?

Mr. CARLIN. In the matter of your indictment.

Mr. KUGEL. Well, I had Mr. Warren Leslie representing me at first. He accompanied me, for purposes of making a statement to the district attorney.

Mr. CARLIN. Who represented you second?

Mr. KUGEL. Mr. Moss.

Mr. CARLIN. Did you have anybody else to represent you?

Mr. KUGEL. And Mr. Slade, acting with Mr. Moss.

Mr. CARLIN. Anybody else?

Mr. KUGEL. No; nobody representing me, excepting we had a consultation once.

Mr. CARLIN. A statement has been furnished us, stating you employed Mr. George Gordon Battle. Did he ever represent you in this matter?

Mr. KUGEL. Yes; I consulted with him in the matter. Mr. Leslie called in Mr. Gordon Battle.

Mr. CARLIN. Did you pay him a fee?

Mr. KUGEL. I did. I paid Mr. Leslie a fee for Mr. Battle. That is, I paid Mr. Leslie a retainer, and after the interview we had with Mr. Battle, Mr. Leslie told me that we would have to pay Mr. Battle. I said “Very well, how much will it be.” He said “You give me a check for \$250, and if there is anything left over I will let you know.”

Mr. CARLIN. There was not anything left over?

Mr. KUGEL. I think not.

Mr. CARLIN. Did Mr. Battle appear in that matter at all?

Mr. KUGEL. No; simply consulted with Mr. Battle with reference to the advisability of my making a statement before the district attorney's office.

Mr. CARLIN. As to the advisability of your telling the truth about your clients; was that about the size of it?

Mr. KUGEL. No; as to whether I should give my entire connections, whether I should appear before the district attorney, regardless of their hostile attitude, and insist upon making a statement, telling them my entire connection with the case.

Mr. CARLIN. Mr. Battle advised you to do that?

Mr. KUGEL. Mr. Battle advised me to do that.

Mr. CARLIN. And you did do that?

Mr. KUGEL. Yes, sir.

Mr. CARLIN. And it was that statement that involved your clients, as you have said here this morning, that you had learned that they were concealing assets?

Mr. KUGEL. No; I don't believe that I quite understand you.

Mr. CARLIN. You stated here this morning that you learned that your bankruptcy clients had been concealing assets?

Mr. KUGEL. It was during the proceeding. That was before the statement.

Mr. CARLIN. That was the statement that Mr. Battle advised you to make, tell the whole truth?

Mr. KUGEL. Yes; tell everything I knew about it.

Mr. CARLIN. Why did you hesitate about telling the truth about it?

Mr. KUGEL. Because Mr. Leslie thought otherwise, and then there was not a chance of getting into the district attorney's office to tell them anything about that.

Mr. CARLIN. You did get in there, did you not?

Mr. KUGEL. Yes.

Mr. CARLIN. You did tell him about it?

Mr. KUGEL. Well, I did; but I doubt very much whether I could go there myself. I was advised that I could not go there myself, I would have to get counsel, and I got counsel just for the purpose of being afforded the opportunity of telling my story and everything I knew about the matter, so they would have that in connection with the story that the bankrupts had told.

Mr. CARLIN. According to your own story, the bankruptcy proceeding was a fraud; is that true?

Mr. KUGEL. Yes, sir.

Mr. CARLIN. The district attorney's office was engaged in trying to indict those who were connected with that fraud; is that true?

Mr. KUGEL. That is true; yes. No; the district attorney was engaged in preparing, as I understand it, for the trial of the perjury charge. That is what I was told by Mr. Hershenstein.

Mr. CARLIN. Perjury, consisting of lying about the assets that were had?

Mr. KUGEL. Yes.

Mr. CARLIN. And the district attorney's office was engaged in trying to bring to the bar of justice men who had been engaged in lying?

Mr. KUGEL. Yes; they were engaged—

Mr. CARLIN. And they did indict them, and subsequently there was a blanket indictment of conspiracy, which included you?

Mr. KUGEL. Yes, sir.

Mr. CARLIN. When that occurred, then you were advised by your counsel to appear before the district attorney's office and tell him all of the facts in the case?

Mr. KUGEL. No; it was before that. I beg your pardon. When I was informed, after this interview with the bankrupts, that they were going to turn the tables on me to save their families—going to save themselves and their families—

Mr. CARLIN. At that juncture you were advised to turn the tables on them and save yourself?

Mr. KUGEL. No; I was not. At that juncture I wanted an opportunity to place the entire matter before the district attorney before the indictment would be handed down.

Mr. CARLIN. For the purpose of preventing an indictment?

Mr. KUGEL. For the purpose of telling them what I knew.

Mr. CARLIN. And telling them what you knew was in effect to turn the tables on your clients, who were trying to turn the tables on you?

Mr. KUGEL. Not in the least. It was to tell them everything that had happened. I assume that the bankrupts had already told them in their statements, which had preceded mine, their connection with the case. I had nothing to turn on them, except my connection with the case.

Mr. CARLIN. If you told Mr. Marshall, as you say you did, that your clients were actually concealing assets and swearing they were not, do you not think that was a very important and material fact?

Mr. KUGEL. That was already a matter of record.

Mr. CARLIN. Then, if it was already a matter of record, what was the earthly use of your insisting on telling it?

Mr. KUGEL. Of telling my connection with it. I did not know what they told Marshall about me. I hadn't the slightest idea. I know that people who were capable of doing what they did might tell a whole lot of things that were not so.

Mr. CARLIN. Was it already of record that these assets had been concealed?

Mr. KUGEL. Yes, sir.

Mr. CARLIN. How did that appear of record?

Mr. KUGEL. That was the subject matter of the perjury charge. They said they did not conceal it. It was already a matter of record that they had.

Mr. CARLIN. How did that appear of record, that they had? How did the record disclose that fact?

Mr. KUGEL. At the subsequent examination the bankrupt appeared and said that on a previous examination, "I was asked whether or not I shipped certain goods. I said I had not. That is not so. I did ship certain goods. I shipped to here and there and the three and four other places."

Mr. CARLIN. The result of this whole matter was this, that your clients pleaded guilty of perjury?

Mr. KUGEL. Yes.

Mr. CARLIN. And conspiracy?

Mr. KUGEL. Yes.

Mr. CARLIN. And were sentenced to the custody of the marshal for 30 days?

Mr. KUGEL. Yes.

Mr. CARLIN. You did not plead guilty but were indicted and tried twice, a mistrial resulting each time?

Mr. KUGEL. Yes, sir.

Mr. CARLIN. Subsequently your case was nolle prossed?

Mr. KUGEL. Yes.

Mr. CARLIN. Now, in the statement that I have here before me, it is stated that Mr. Rogal was told that unless he did squeal on you that his wife would be indicted. Do you know anything about that?

Mr. KUGEL. His mother-in-law. His wife and his mother-in-law and the whole flock, because they all figured in this concealment of assets.

Mr. CARLIN. How many of them were indicted?

Mr. KUGEL. Just Rogal and Glass; none of the women were indicted.

Mr. CARLIN. The mother-in-law escaped?

Mr. KUGEL. The mother-in-law escaped.

Mr. CARLIN. Was there anything improper about the connection of Mr. Battle with this matter, as your counsel?

Mr. KUGEL. None whatever. I don't want it understood that I—Mr. Battle stands very well in this community as a lawyer and naturally stands well here in the court. All I wanted was—I wanted to drive away that hostile attitude that prevailed here.

Mr. CARLIN. You wanted the services of a reputable lawyer?

Mr. KUGEL. I did.

Mr. CARLIN. And you sought advice from Mr. Battle?

Mr. KUGEL. Certainly did.

Mr. CARLIN. Do you wish it understood that there was anything improper in Mr. Battle's relation with the case or the district attorney's office in connection with the case?

Mr. KUGEL. So far as I know, positively not.

Mr. CARLIN. Except that his advice to you was to appear before the district attorney's office, and disclose all you knew about the case?

Mr. KUGEL. That's it exactly. There was a difference of opinion.

Mr. CARLIN. And you sought the first opportunity to do that and did it?

Mr. KUGEL. First opportunity I had I came to the district attorney's office, and in three sessions told him what I knew about the case.

Mr. NELSON. I did not quite follow how you connect the alleged misdeeds of Mr. Hershenstein with Mr. Marshall. You simply hold the superior counsel for his subordinate's conduct?

Mr. KUGEL. That is all. As I say, in my matter I have not had any direct intercourse with Mr. Marshall.

Mr. CARLIN. Have you any knowledge—if you have already stated so. I will not go into it—that Mr. Marshall knew the facts in this case and approved what his subordinate had done? Have you already covered that?

Mr. KUGEL. None, except what I have already testified to, so far as the matter was called to his attention by my counsel.

Mr. CARLIN. Mr. Walsh, do you desire to ask any questions of this witness?

Mr. WALSH. Just a question or two. Mr. Kugel, on your first trial, did you have a witness named Oppenheimer?

Mr. KUGEL. Yes.

Mr. WALSH. Was he at that time under indictment?

Mr. KUGEL. He was.

Mr. WALSH. Do you personally know of any arrangement made by your attorney with the district attorney not to bring that fact out before the jury?

Mr. KUGEL. Yes; I know that arrangement had been made that Mr. Oppenheimer should not be asked whether he was under indictment; that is, asked by the district attorney.

Mr. WALSH. That arrangement was made with him and by whom?

Mr. KUGEL. It was made between my counsel and the district attorney and the judge.

Mr. WALSH. In the judge's chambers?

Mr. KUGEL. In the judge's chambers.

Mr. WALSH. Did Mr. Oppenheimer appear as a witness?

Mr. KUGEL. He did.

Mr. WALSH. Was he asked on that first trial whether or not he had been under indictment?

Mr. KUGEL. I don't remember the specific question. I know it came out—whether it was by the direct question—

Mr. WALSH. Note my question. It was on the first trial. Was he asked on the first trial by the district attorney whether or not he was under indictment?

Mr. KUGEL. No; I think not.

Mr. WALSH. Now, on the second trial was he asked that?

Mr. KUGEL. Yes; on the second trial it was brought out by cross-examination.

Mr. WALSH. You stated, in response to one of the committee, that you charged the district attorney's subordinates with destroying evidence. What do you refer to in that respect.

Mr. KUGEL. Well, that was some records that a Mr. George I. Cohen, an attorney of Boston, brought along with him in answer to a subpoena.

Mr. WALSH. Well, Mr. Cohen is here, is he not, and can tell that himself?

Mr. KUGEL. Yes.

Mr. WALSH. I think that is all.

Mr. CARLIN. You can stand aside, Mr. Kugel.

TESTIMONY OF STEWART BROWNE.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. CARLIN. What is your address and occupation, Mr. Browne.

Mr. BROWNE. Banker and broker.

Mr. CARLIN. Are you the superintendent of the building?

Mr. BROWNE. I beg pardon.

Mr. CARLIN. Are you the superintendent of the building?

Mr. BROWNE. Owner.

Mr. CARLIN. I did not ask you what building.

Mr. BROWNE. You asked me if I was the superintendent. I suppose you refer to a building at 170 Broadway.

Mr. CARLIN. That was your supposition?

Mr. BROWNE. Yes.

Mr. CARLIN. I would be very much obliged to you if you will wait until I ask you the questions and then we will not have any suppositions.

Mr. BROWNE. All right, sir.

Mr. CARLIN. Are you the owner of the building, 170 Broadway?

Mr. BROWNE. I am.

Mr. CARLIN. Is Mr. Kugel one of your tenants?

Mr. BROWNE. He is.

Mr. CARLIN. Are you familiar with the circumstances surrounding his indictment?

Mr. BROWNE. No; not all.

Mr. CARLIN. Do you know anything about the indictment found against Rogal, growing out of the bankruptcy proceedings?

Mr. BROWNE. Nothing at all.

Mr. CARLIN. A statement is before me in which I am advised that you had some information with reference to the suborning of testimony by the office of the district attorney, in order to procure an indictment against Kugel.

Mr. BROWNE. I don't know the first thing about it.

Mr. CARLIN. Did you have any conversation with the district attorney about the indictment of Kugel?

Mr. BROWNE. Not about the indictment of Kugel. I had a conversation with Mr. Marshall. I didn't know that he was indicted.

Mr. CARLIN. About Kugel?

Mr. BROWNE. No; I saw Mr. Marshall about Mr. Kugel, shortly after Mr. Kugel told me of the contemplated proceedings, and I told him that I understood two of his assistants had this matter in charge, and that I had known Mr. Kugel for some time, and had found him perfectly square, so far as I knew, and "Mr. Marshall, you will oblige me very much if you will give the matter your personal attention." That was the whole of my conversation with Mr. Marshall.

Mr. CARLIN. What was his conversation?

Mr. BROWNE. Nothing.

Mr. CARLIN. Mr. Marshall said nothing?

Mr. BROWNE. Nothing.

Mr. CARLIN. Just stood mute?

Mr. BROWNE. Simply he would look into it himself; that was all.

Mr. CARLIN. He would do what?

Mr. BROWNE. He would look into it himself; that was all.

Mr. GARD. Did he say anything to you about there being no foundation for the indictment against Mr. Kugel, or that it was a poor case, or they could not convict him?

Mr. BROWNE. No.

Mr. GARD. Nothing like that?

Mr. BROWNE. No.

Mr. GARD. You just went to see Marshall on Kugel's behalf and explained your acquaintance with him?

Mr. BROWNE. That was all. He was a tenant of ours.

Mr. GARD. Your relation with him had been that of owner and tenant?

Mr. BROWNE. That is all.

Mr. GARD. That is all there was to it?

Mr. BROWNE. That is all there was to it.

Mr. NELSON. Who asked you to do that?

Mr. BROWNE. I think I volunteered. Mr. Kugel came up and told me he was having some trouble with the district attorney's office.

Mr. NELSON. You knew Mr. Marshall personally?

Mr. BROWNE. Oh, yes; for a number of years—15 or more years.

Mr. CARLIN. Do you know a gentleman named McCleary?

Mr. BROWNE. Not by name. I could tell if I saw him.

Mr. CARLIN. You do not recall having a conversation with a man named McCleary?

Mr. BROWNE. I do not recall at the moment. If I saw the man I could tell you whether I knew him—at least I could from memory of faces, but the name is not familiar to me at all.

Mr. CARLIN. Do you want to ask this witness any questions?

Mr. WALSH. No.

Mr. CARLIN. Mr. Walsh has no question to ask—you can stand aside.

Mr. BROWNE. That is finished?

Mr. CARLIN. Yes.

TESTIMONY OF GEORGE I. COHEN.

(The witness was duly sworn by Mr. Russell, clerk of the subcommittee.)

Mr. CARLIN. Where are you from, Mr. Cohen?

Mr. COHEN. Boston, Mass.

Mr. CARLIN. What is your business?

Mr. COHEN. Lawyer.

Mr. CARLIN. What is your address in Boston?

Mr. COHEN. 43 Tremont Street.

Mr. CARLIN. Are you familiar with the indictment formerly had against Kugel?

Mr. COHEN. I remember the case.

Mr. CARLIN. What was your connection with it?

Mr. COHEN. I was summoned as a witness for the Government. One of the parties had had a conference with me sometime in 1913. The next I knew I was summoned to come here in December, 1913, by the Government on the grand-jury proceedings.

Mr. CARLIN. Well, did you come?

Mr. COHEN. I did.

Mr. CARLIN. What did you do after you got here?

Mr. COHEN. Well, I saw Mr. Hershenstein—I think that was the name—the assistant, and I told him my story, and I brought with me some papers which I had concerning the case, among which was a paper containing the notes which I had made at the conferences which I had had with Mr. Rogal and a Mrs. Goldstein.

Mr. CARLIN. Had you been consulted by the bankrupt?

Mr. COHEN. Not by the bankrupt, by a Mrs. Goldstein, and she brought in Mr. Rogal.

Mr. CARLIN. Rogal was the bankrupt?

Mr. COHEN. Yes; but he did not come to my office to consult me; but he came with Mrs. Goldstein. Mrs. Goldstein was from Boston and she was a client of mine.

Mr. CARLIN. What interest had she in the bankruptcy proceedings?

Mr. COHEN. I think she was a credit on the case.

Mr. CARLIN. Now, when you got here to New York you say you called on the district attorney?

Mr. COHEN. Yes.

Mr. CARLIN. Who did you see?

Mr. COHEN. Mr. Hershenstein.

Mr. CARLIN. You brought these papers with you that you had?

Mr. COHEN. Yes, sir.

Mr. CARLIN. Now, tell us what took place between you and Mr. Hershenstein.

Mr. COHEN. When I got through finally, he said to me, "Are you related to a Cohen who is in this case?" I said, "No." "Well," he said, "then I am awfully sorry to have brought you over here. It is my mistake," he says. He says, "I see you have no connection with the case," and while he was talking with me he tore up my papers and threw them in the waste basket. He says, "That is all; I won't need you any further."

Mr. CARLIN. Tore up your papers?

Mr. COHEN. Yes, sir; I thought nothing further of it. I had just been married the night before.

Mr. CARLIN. You did not care how many papers they tore up?

Mr. COHEN. And was not paying very much attention to what he was saying to me, and we left the office. Mrs. Cohen was with me at the time.

Mr. CARLIN. Does matrimony make a gentleman indifferent to the destruction of his papers?

Mr. COHEN. Why, he explained to me that my connection with the case was through error—in other words, he gave me the impression that he called me on a wrong case, and I did not know where there were any proceedings pending in which I was involved. In other words, that what he told me was absolutely so.

Mr. CARLIN. About these papers, what did the papers consist of?

Mr. COHEN. I had a letter which I had written to a Mr. Ansgore here in New York—a copy of a letter, rather—and I had the original notes that I had taken down at the time of the conference with Mrs. Goldstein and when Mr. Rogal was present. They told me a story, and as is my custom I made pencil notes of what they told me.

Mr. CARLIN. You had the notes of Mrs. Goldstein?

Mr. COHEN. That was my own notes.

Mr. CARLIN. Mrs. Goldstein's conversation with you?

Mr. COHEN. Yes, sir.

Mr. CARLIN. But the district attorney did not regard those papers as worth anything to him?

Mr. COHEN. No, sir.

Mr. CARLIN. Did you regard them as worth anything to you?

Mr. COHEN. No, sir.

Mr. CARLIN. Then they were worthless papers?

Mr. COHEN. Why, yes; they were worthless, unless I was told of the importance of the papers at the time. When he said to me that they had no connection with this case, why, I was not considering the papers as being worth anything, any more than hundreds of other folders that I had in the office.

Mr. CARLIN. So really all you got out of it was a honeymoon trip at the expense of the Government?

Mr. COHEN. I did not get very much from the Government, either. After that I had some controversy about getting my fees from them. He offered me \$1.50 for my fee.

Mr. GARD. Who did?

Mr. COHEN. Mr. Hershenstein. I explained to him I thought I ought to get what was coming to me, especially in view of the fact that I had telephoned to him, and I had spent, I think, \$8 telephoning him from Boston before I came, and after some controversy with him he finally allowed me half fare—half of the usual witness fee.

Mr. CARLIN. Divided fifty-fifty?

Mr. COHEN. Fifty-fifty.

Mr. GARD. Were you subpoenaed as a witness, may I ask?

Mr. COHEN. Yes, sir.

Mr. CARLIN. Now, you came afterwards to the trial?

Mr. COHEN. Yes, sir.

Mr. CARLIN. You were a witness on the trial?

Mr. COHEN. Yes, sir.

Mr. CARLIN. That was the trial of Kugel?

Mr. COHEN. Yes, sir.

Mr. CARLIN. Who called you as a witness in that case?

Mr. COHEN. The Government did.

Mr. CARLIN. Now, during the trial of that case did it develop that the papers which had been destroyed were desirable papers?

Mr. COHEN. Yes, sir.

Mr. CARLIN. Tell us what developed in the trial about the papers.

Mr. COHEN. I testified in the case, just as I am testifying now, just what had happened, and I thought that if I had the papers it might have refreshed my recollection as to just what the parties had told me in the office at the time, and it would have assisted me materially in giving more accurate evidence.

Mr. CARLIN. That is the only use the papers would have been?

Mr. COHEN. That is all.

Mr. CARLIN. As far as the letter was concerned, it was only a copy?

Mr. COHEN. That is all.

Mr. CARLIN. You could have gotten, if you summoned that party to whom the letter was addressed, the original letter?

Mr. COHEN. I believe so. I believe the original was in evidence in the case.

Mr. CARLIN. The original letter of which you had a copy, and the copy being destroyed, the original letter was subsequently produced?

Mr. COHEN. I think it was in the case; yes.

Mr. CARLIN. So there was nothing lost by virtue of the destruction of the letter?

Mr. COHEN. I do not think so.

Mr. CARLIN. Was the Government's case in any way aided by the destruction of those papers, according to your conception of the case?

Mr. COHEN. I think it was materially, because, as I remembered it at that time, there was no reference made—

Mr. CARLIN (interposing). That is not an answer to my question. You say the letter was produced. Was the Government's case aided by the destruction of the copy of the letter you had?

Mr. COHEN. Not the letter; no.

Mr. CARLIN. Now, as to the copy of the notes, the only difference at the trial and what would have occurred had you had your notes, was the question of refreshing your own recollection?

Mr. COHEN. Yes, sir.

Mr. CARLIN. Do you think you forgot anything at the trial that was in the notes?

Mr. COHEN. I can not say.

Mr. CARLIN. What is your best opinion about it?

Mr. COHEN. I think I gave a fairly accurate gist of what was in the papers.

Mr. CARLIN. Now, were you a witness on the second trial?

Mr. COHEN. Yes, sir.

Mr. CARLIN. Who called you then?

Mr. COHEN. The Government subpoenaed me, and the defense called me.

Mr. CARLIN. Now, on that trial you were testifying with reference to the same letter and the same papers?

Mr. COHEN. Yes; the same matters.

Mr. CARLIN. And the original letter was in evidence again?

Mr. COHEN. I believe so; yes.

Mr. CARLIN. Anyway your notes would not have been in evidence in either trial, would they?

Mr. COHEN. I don't think so.

Mr. CARLIN. They would simply have been used for refreshing your own recollections?

Mr. COHEN. Yes; that is all.

Mr. CARLIN. Did you have any other notes?

Mr. COHEN. No, sir.

Mr. NELSON. You never formed the impression, did you, when Mr. Hershenstein destroyed those notes that he desired to destroy evidence?

Mr. COHEN. No, sir.

Mr. GARD. One thing I want to ask you. You spoke about his offering you \$1.50 for your fees. Do I understand by that that he was trying to buy your witness fee and your allowance for mileage for \$1.50, for himself, or that he was to make an allowance as an officer to you of \$1.50?

Mr. COHEN. Why, he told me that all that I was entitled to was one day's attendance in court. I told him I had come from Boston and I thought, as I understood it, that I ought to get an allowance for mileage. He would not have it that way, and I told him I would go in and see the court about it.

Mr. GARD. Were you subpoenaed in Boston or New York?

Mr. COHEN. In Boston, sir. I had come specially from Boston.

Mr. GARD. Then the matter was this way: He was the assistant district attorney and he wanted to make you an allowance of one day's attendance in court of \$1.50?

Mr. COHEN. Yes, sir.

Mr. GARD. And you wanted more?

Mr. COHEN. Yes, sir.

Mr. GARD. And you finally got half of fee?

Mr. COHEN. I got half of what I was entitled to.

Mr. GARD. Got that on his certificate as assistant district attorney?

Mr. COHEN. I believe so; yes.

Mr. NELSON. What did you telephone? Did you telephone beforehand that you did not know anything about this matter?

Mr. NELSON. What did you telephone? Did you telephone before the wedding; and I telephoned him that we were having a wedding in Boston.

Mr. NELSON. You don't need to go into details. Did you advise him beforehand that you would not have testimony—

Mr. COHEN. Oh, no. My conversation with the office had nothing to do with the evidence, merely with reference to the time of coming here and whether he could not wait until Monday.

Mr. CARLIN. Well, he did wait and you were married?

Mr. COHEN. Yes, sir.

Mr. CARLIN. And you did come?

Mr. COHEN. Yes, sir.

Mr. CARLIN. And your bride came with you?

Mr. COHEN. Yes, sir.

Mr. CARLIN. And she is here this morning, summoned as a witness, I believe?

Mr. COHEN. Yes, sir.

Mr. CARLIN. Well, we will excuse you and call your wife.

TESTIMONY OF SOPHIA C. COHEN.

(The witness was duly sworn by Mr. Russell, clerk of the sub-committee.)

Mr. CARLIN. Mrs. Cohen, did you visit the district attorney's office with your husband when you came to New York on your bridal trip?

Mrs. COHEN. Yes, sir.

Mr. CARLIN. Do you remember the day of that visit?

Mrs. COHEN. Twenty-second of December, 1913.

Mr. CARLIN. Do you remember who you saw?

Mrs. COHEN. Mr. Hershenstein and two other men at different desks.

Mr. CARLIN. We can not hear you.

Mrs. COHEN. I am sorry. Mr. Hershenstein and two other men at two different desks.

Mr. CARLIN. Well, did you observe Mr. Hershenstein destroy any papers belonging to your husband?

Mrs. COHEN. Yes.

Mr. CARLIN. Do you recall any conversation that took place?

Mrs. COHEN. I was too far away to hear any conversation.

Mr. CARLIN. You did not hear any conversation?

Mrs. COHEN. I did not hear anything.

Mr. CARLIN. You did not know anything about the papers?

Mrs. COHEN. Nothing.

Mr. CARLIN. Unless some member of the court has some questions to ask, we will excuse Mrs. Cohen.

Mr. NELSON. Did you see him destroy the papers?

Mrs. COHEN. Yes; I saw him tear them up and throw them into the waste-paper basket.

Mr. NELSON. Do you know what those papers were?

Mrs. COHEN. No.

Mr. NELSON. Did you see your husband hand him the papers?

Mrs. COHEN. Yes; he glanced them over, and then he tore them up.

Mr. WALSH. Mrs. Cohen, did you hear anyone say to your husband that he was not the Mr. Cohen that was wanted?

Mrs. COHEN. No; I did not hear anything.

Mr. CARLIN. You are excused.

TESTIMONY OF SALIC GOODMAN.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. WALSH. Your full name?

Mr. GOODMAN. Salic Goodman.

Mr. WALSH. Your occupation is what?

Mr. GOODMAN. Manager, Goodman's Storage & Express Co.

Mr. WALSH. Do you remember the time that Mr. Kugel was indicted?

Mr. GOODMAN. I do.

Mr. WALSH. Were you a witness in that case?

Mr. GOODMAN. I was.

Mr. WALSH. Before you became a witness in that case, were you summoned to appear before the grand jury?

Mr. GOODMAN. I was.

Mr. WALSH. When you appeared, were you heard before the grand jury upon the first time you were summoned?

Mr. GOODMAN. No, sir; I was not.

Mr. WALSH. Where were you brought?

Mr. GOODMAN. To the assistant district attorney's office.

Mr. WALSH. Whom did you see there?

Mr. GOODMAN. Mr. Hershenstein.

Mr. WALSH. Did you tell him what you knew in reference to the Kugel case?

Mr. GOODMAN. I did not happen to know anything about it at that time. He had called me to show a piece of goods that we had handled, and I had explained those things once before before him.

Mr. WALSH. Well, after that interview what happened?

Mr. GOODMAN. I had been called about 30 or 40 times on different occasions to show receipts, and he sent me several different places to try to identify different people.

Mr. WALSH. At any time did Mr. Hershenstein ask you to change your statement that you had made to him?

Mr. GOODMAN. Several times I came up there, and he always asked me, "Are you ready to change your story?" I told him I had no story to change, only the facts on the receipts that we had.

Mr. WALSH. Did he send to see you at any time, with the suggestion that you change your story?

Mr. GOODMAN. There was one case where several detectives came down to the office, following it up with me in tracing things, and another occasion they came down and swore and cursed at me, and I

ordered them out of the office, and I told them if they had anything to talk about to talk like a gentleman and not to abuse anybody.

Mr. WALSH. About how many times were you brought down to the district attorney's office before you were brought before the grand jury?

Mr. GOODMAN. Probably 25 or 30 times.

Mr. WALSH. Were you subpoenaed upon each occasion?

Mr. GOODMAN. He had a subpoena, and he told me that any time he rings me up I should come up without sending the marshal down.

Mr. WALSH. Who said that to you?

Mr. GOODMAN. Mr. Hershenstein.

Mr. WALSH. When you were brought before the grand jury did you testify?

Mr. GOODMAN. I testified to the questions that were asked, and he held me for contempt of court on one occasion.

Mr. WALSH. Who?

Mr. GOODMAN. Mr. Hershenstein. And took me before some judge, and the judge told him to take me back to the grand jury room, that he thinks I can answer these questions and satisfy the jury.

Mr. WALSH. Did Mr. Hershenstein make any threats to have you change your story before the grand jury?

Mr. GOODMAN. He tried to tell me things that wasn't so—that he thought was so; and I told him that everything that I had told from the beginning was the same story I knew in the whole matter.

Mr. WALSH. Was there any stenographer present?

Mr. GOODMAN. Yes, sir.

Mr. WALSH. Did the stenographer take down what happened between you at that time?

Mr. GOODMAN. I suppose so.

Mr. WALSH. Did you have any talk with Mr. Wood in reference to the matter?

Mr. GOODMAN. On one occasion, in Mr. Hershenstein's office, I was called in there, and Mr. Wood was present, and he says to Mr. Wood: "I think this fellow is not telling the truth; he is lying all the way through"; and he asked Mr. Wood, "What shall we do with him?"; and they started talking, and he says, "The best thing we can do is to indict this fellow, and he will change his story." I told them to go as far as they wanted; that I had told the truth.

Mr. WALSH. Were you indicted?

Mr. GOODMAN. Not as I know.

Mr. WALSH. Did you at any time go to Mr. Kugel's office, at the direction of anybody from the office of the district attorney?

Mr. GOODMAN. I did. Mr. Wood asked me if I knew Mr. Kugel. I told him I didn't. He gave me his address, and that I should go up there with the story of a desk salesman and try to sell him a desk; in the meantime to try to find out something. He told me to identify him as the man that transacted business with me. I went there and reported back to him. That was the first time I ever saw the man.

Mr. WALSH. That was the first time you saw Mr. Kugel?

Mr. GOODMAN. Yes, sir.

Mr. WALSH. You testified in the first case?

Mr. GOODMAN. Yes, sir.

Mr. WALSH. After you testified in the first case, were you subpoenaed again to appear before the district attorney?

Mr. GOODMAN. Yes, sir; about the same number of times in the second case as in the first case.

Mr. WALSH. Were any members of your family subpoenaed?

Mr. GOODMAN. Subpoenaed my father and two brothers and all of the drivers and helpers, and on one occasion they asked the helpers if they spoke to me or the father in reference to the subpoenas. They asked me that question before the grand jury, and told me the drivers received a subpoena.

Mr. WALSH. Did those people, your father and the other people, know anything about the matter?

Mr. GOODMAN. No, sir; not as far as I know.

Mr. WALSH. Were they brought down to the district attorney's office on more than one occasion?

Mr. GOODMAN. I do not remember. I think my brother was called on two or three occasions, and my father, I think, was called on one occasion to Mr. Hershenstein's office and on one occasion to the grand jury.

Mr. WALSH. When you testified in the Kugel case who called you, the Government or the defense?

Mr. GOODMAN. Mr. Kugel. I did not know anything in this matter at all until Mr. Hershenstein asked us to show receipts in matters pertaining to some baggage which we had.

Mr. WALSH. You were called then on the first trial by the Government?

Mr. GOODMAN. I was called in all cases by the Government.

Mr. WALSH. You testified in the second trial?

Mr. GOODMAN. I testified in the second trial, and at the trial he brought up some witnesses, while I was a witness on the stand, to be identified as some persons I did not know anything about. He tried to tell me—he tried to humiliate me on the stand, trying to tell those people I was lying.

Mr. CARLIN. You were not lying?

Mr. GOODMAN. No, sir; I was not.

Mr. WALSH. Were you asked at any time when you were before the grand jury to do any writing?

Mr. GOODMAN. Yes, sir; I wrote about 30 or 40 pages of paper.

Mr. WALSH. What did you write?

Mr. GOODMAN. I wrote my name and several other names—different names in different handwritings, changed backward and forward. They kept me at it about an hour, writing.

Mr. WALSH. Who asked you to do that?

Mr. GOODMAN. Mr. Wood and Mr. Hershenstein, both.

Mr. WALSH. You were writing different things they would dictate?

Mr. GOODMAN. Anything they dictated, my name and other people's names.

Mr. WALSH. That was kept up for an hour?

Mr. GOODMAN. Pretty near an hour to write about 30 or 40 sheets of paper.

Mr. WALSH. Was the grand jury present at that time?

Mr. GOODMAN. Yes, sir.

Mr. WALSH. How did you come to start it?

Mr. GOODMAN. There was a question put to me, and I thought it was not right for me to answer. I told him I did not think it was right to answer the question. One of the grand jurymen told the district attorney he thought I had not ought to answer that question. That is the question they held me on for contempt of court.

Mr. CARLIN. What was the question?

Mr. GOODMAN. I don't recollect it now.

Mr. WALSH. Did the grand jury say anything to Mr. Hershenstein or Mr. Wood about your being obliged to write so long?

Mr. GOODMAN. Not that I know of. The only thing, they went back with me before the judge. The judge asked me several questions, and says, "You better go back to the grand-jury room, I think you can answer."

Mr. CARLIN. You can stand aside.

TESTIMONY OF HERMAN H. OPPENHEIMER.

(The witness was duly sworn by Mr. Russell, clerk of the subcommittee.)

Mr. WALSH. Mr. Oppenheimer, you are an attorney at law?

Mr. OPPENHEIMER. Yes, sir.

Mr. WALSH. Practicing here in New York?

Mr. OPPENHEIMER. Yes.

Mr. WALSH. How long have you been practicing here in New York?

Mr. OPPENHEIMER. About 18 years.

Mr. WALSH. Do you know Mr. Wood and Mr. Hershenstein?

Mr. OPPENHEIMER. Yes.

Mr. WALSH. Mr. Marshall?

Mr. OPPENHEIMER. Yes.

Mr. WALSH. Now, at any time, Mr. Oppenheimer, were you indicted by the grand jury?

Mr. OPPENHEIMER. Yes; very many times.

Mr. WALSH. How many times were you indicted?

Mr. OPPENHEIMER. About seven.

Mr. WALSH. About seven times?

Mr. OPPENHEIMER. Yes.

Mr. WALSH. Were you ever brought to trial upon any of those indictments?

Mr. OPPENHEIMER. No; not yet.

Mr. WALSH. What was the charge; can you tell us?

Mr. OPPENHEIMER. Conspiracy. Well, the first indictment was never handed up to the court, because of a statement I made to the district attorney which convinced him that there was nothing to the indictment.

Mr. GARD. Who was that district attorney?

Mr. OPPENHEIMER. Mr. Marshall; and that was, I believe, for subornation of perjury. Then I was to be informed if the second indictment was to be brought so that I could again make a statement, but the second and third indictments were handed down together, with the mere information that they did not care to have any further statements. The second indictment was for conspiracy to conceal assets—assist the bankrupt to conceal assets from the trustee.

That indictment was against nine people in the one and eight of the same nine in the second one, handed down at the same time. I pleaded then, and they were finally dismissed by Judge Thomas, on motions.

Mr. CARLIN. On whose motion?

Mr. OPPENHEIMER. My motion.

Mr. GARD. What was your motion, that you had not been brought to trial?

Mr. OPPENHEIMER. No, sir; the motion was on the statute of limitations. The time expired in which an appeal could be taken, and then a motion was made by Mr. Marshall to have an order entered, so that he could take an appeal. He let the time run out in which that could be done, which was denied. The judge denied that motion, and then there was another indictment on file here for two or three years, against another attorney for a similar crime—alleged crime—and Mr. Hershenstein told me that they had arranged to have that attorney file a plea in abatement to have that indictment dismissed, so that they could raise the question and take it up on appeal to the Supreme Court. I wrote a letter concerning that to Mr. Marshall, that it would not be right to do such a thing. A plea in abatement must be filed immediately, as the Supreme Court of the United States has decided, and this was two or three years after the indictment, and to take a case up like that by agreement would be an imposition on the Supreme Court.

Mr. CARLIN. Be an imposition on the Supreme Court?

Mr. OPPENHEIMER. Yes; that would be a moot question, raised merely for the purpose of getting a decision in a case where the question was not properly raised, because if the court's attention was called to the fact that the plea in abatement was filed two or three years after the indictment, the plea in abatement must be dismissed. Mr. Marshall replied to that letter that I had been misinformed, that it was not taken up by agreement.

Mr. WALSH. Have you got your copy and his reply, Mr. Oppenheimer?

Mr. OPPENHEIMER. I have his reply, I believe. I do not think I have a copy here.

Mr. WALSH. Now, Mr. Oppenheimer, I understand that one of the indictments—and by the way, can you tell us which it was by number that Judge Thomas quashed?

Mr. OPPENHEIMER. 2061 and 2062.

Mr. WALSH. I meant was it the first or second.

Mr. OPPENHEIMER. The second and third.

Mr. WALSH. That Judge Thomas quashed those indictments and the time for an appeal was by?

Mr. OPPENHEIMER. Yes.

Mr. WALSH. Were you indicted again?

Mr. OPPENHEIMER. Yes, sir. Then I was indicted on—I think the next one was in November 20, 1914. That indictment—do you want me to go right ahead and tell you?

Mr. WALSH. Go right along and tell us about that.

Mr. OPPENHEIMER. That indictment was handed to me on a Friday afternoon, I believe, and I was to plead to it on Monday morning. On Monday morning I pleaded to it; and when I then saw the indictment it had been changed, between the time it was handed

down by the grand jury on Friday and Monday morning when I pleaded to it, by adding to it several words and phrases, charging the concealment of other things than the indictment which had been voted by the grand jury.

Mr. GARD. You mean it was changed after it was handed down by the grand jury?

Mr. OPPENHEIMER. Yes, sir.

Mr. WALSH. Was that called to the attention of the court?

Mr. OPPENHEIMER. No; not until we called it to the attention, after I had pleaded.

Mr. WALSH. What became of that indictment?

Mr. OPPENHEIMER. It was only after I pleaded that I could get a copy of the new indictment. I had handed back the one on the Friday. That indictment, when the attention of the court was called to that fact, was nolle prossed, and another indictment—

Mr. NELSON. It was admitted it had been changed?

Mr. OPPENHEIMER. Yes, sir.

Mr. NELSON. Who changed it?

Mr. OPPENHEIMER. That admission was not made directly?

Mr. NELSON. You said it was admitted.

Mr. OPPENHEIMER. It was not admitted who had changed it.

Mr. GARD. Have you any information as to who changed it?

Mr. OPPENHEIMER. No; not that I can say positively. It was in the district attorney's office, of course. He was the only one who had possession of the original indictment; the only one that could have changed it.

Mr. NELSON. Was the court convinced there had been a change in the language of the indictment?

Mr. OPPENHEIMER. Yes. Of course it was not the same indictment.

Mr. NELSON. There was a comparison made, and it was discovered it had been changed?

Mr. OPPENHEIMER. Of course.

Mr. GARD. Was it dismissed for that reason?

Mr. OPPENHEIMER. Why, it was nolle prossed, practically by consent, then, when they admitted the change.

Mr. GARD. Is there any record—can we have access to any record—showing this indictment, and any record of evidence showing that there was a change and that it was dismissed for that reason?

Mr. OPPENHEIMER. I don't think there was any record made of it, unless the clerk of the court has a record of what occurred that morning before him.

Mr. CARLIN. Who was the assistant that tried the case?

Mr. OPPENHEIMER. Mr. Hershenstein and Mr. Wood.

Mr. CARLIN. They were present in the court and admitted that the indictment had been changed?

Mr. OPPENHEIMER. They did not say it in so many words. They simply said "We will get another indictment," when that was called to the attention of the court.

Mr. CARLIN. Did the court say anything about that sort of practice?

Mr. OPPENHEIMER. No; it was a judge who—I am not sure—there have been 10 or 12 judges in these cases—it was either from Michigan or Alabama.

Mr. GARD. How long ago was this?

Mr. OPPENHEIMER. November, 1914.

Mr. NELSON. How was the change made—did you see the copy?

Mr. OPPENHEIMER. Yes [indicating]. This is a Chinese copy of the change. Sending other choses in action was written in and certain other changes.

Mr. GARD. Is that all of the change, other moneys and choses in action—is that the change?

Mr. OPPENHEIMER. Yes; and another word there somewhere. I don't know exactly where.

Mr. NELSON. The change was not in the substance of the indictment?

Mr. OPPENHEIMER. Oh, yes; in the substance.

Mr. NELSON. Did not charge another offense, a different offense?

Mr. OPPENHEIMER. No; but it charged another material act in the offense.

Mr. GARD. It was formerly "moneys," and they enlarged it into "moneys and choses in action"?

Mr. OPPENHEIMER. Yes.

Mr. GARD. I am interested to know if we can get any record evidence of the fact of such changes having been made in the district attorney's office?

Mr. OPPENHEIMER. I do not think it will be denied by anybody. Mr. Rose, of my counsel, Kellog & Rose, can tell you about it; Mr. Leary, the clerk, can tell you about it, and I doubt if Mr. Wood and Mr. Hershenstein would deny it.

Mr. GARD. Have you the number of that indictment? We will call the clerk.

Mr. OPPENHEIMER. No. 235.

Mr. GARD. We will call the clerk.

Mr. OPPENHEIMER. No; it is not No. 235. Pardon me. I do not see the number on here. I can get you the number from the record.

Mr. GARD. We had better call Mr. Leary, the clerk.

Mr. WALSH. After this indictment was changed, Mr. Oppenheimer, were you again indicted by the grand jury?

Mr. OPPENHEIMER. Yes. Then, on the following Monday I tried to get before the grand jury, and was waiting around there, when, at 2 minutes to 1, while the grand jury door was open, Mr. Hershenstein walked up, with a bundle of papers in his hand, and walked into the grand jury room, and walks right out again, and takes the grand jury downstairs, and hands up another indictment against me. I pleaded to that.

Mr. WALSH. What became of that indictment?

Mr. OPPENHEIMER. I then raised the question that the grand jury had never voted that indictment. There could not have been time for any vote to have been taken. He just entered the door—the door was open—and walked right out again. That indictment was nolle prossed.

Mr. GARD. For what reason?

Mr. OPPENHEIMER. They handed up the indictment without its having been voted. There was no indictment voted. We argued there on the other questions involved, after filing my plea to it, and Judge Grubb said that if the indictment was not voted the first thing that must be done is to vote the indictment, and, of course, "I will

not consider the case at all, then." and the district attorney said he would get another indictment.

Mr. CARLIN. Did the district attorney admit that the indictment was not voted?

Mr. OPPENHEIMER. Well, not in so many words, no; but he said he would get another indictment.

Mr. NELSON. Did he say it had been voted?

Mr. OPPENHEIMER. No.

Mr. NELSON. He said he would get another indictment?

Mr. OPPENHEIMER. Yes.

Mr. NELSON. The court understood it, and you construed it that it was not voted?

Mr. OPPENHEIMER. It was plain that it was not voted, and they would not go ahead on it, because they knew it was not voted.

Mr. NELSON. Was it signed by the district attorney?

Mr. OPPENHEIMER. That was another one.

Mr. WALSH. Another one that was not signed by the district attorney?

Mr. OPPENHEIMER. Yes.

Mr. NELSON. Was this signed by the district attorney?

Mr. OPPENHEIMER. Yes.

Mr. NELSON. By Mr. Marshall?

Mr. OPPENHEIMER. Yes.

Mr. NELSON. That is, it must have been signed in blank?

Mr. OPPENHEIMER. No, no; they sign them before they hand them to the district attorney—before the grand jury hands them to the court, the district attorney signs them.

Mr. WALSH. What was done with that indictment, Mr. Oppenheimer?

Mr. OPPENHEIMER. Then there was another one handed up, which I pleaded to again, and was not signed, and after I had pleaded to it, the court's attention was called to the fact by the clerk of the court, that this indictment was not even signed by the district attorney, and that was nolle; and then another indictment was obtained.

Mr. WALSH. How many indictments, all told, were there handed up?

Mr. OPPENHEIMER. Six were handed up; the first was never handed up, but that was actually voted, and I do not know how they ever got it not to be voted, because the grand jury went out of existence on the day that I pleaded to that indictment.

Mr. WALSH. So in your case there have been seven indictments?

Mr. OPPENHEIMER. Seven indictments.

Mr. WALSH. And no trial?

Mr. OPPENHEIMER. No conviction.

Mr. WALSH. No conviction?

Mr. OPPENHEIMER. The last indictment was dismissed by Judge Pope, in a decision in which he says it is wrong to keep on indicting a man after one judge has decided on a state of facts that he should not be indicted, and that the last indictment, which contained an additional overt act, clearly showed, on its face, that it was not an additional overt act, and could not have been an additional overt act.

Mr. CARLIN. What became of that indictment?

OPPENHEIMER. I moved to quash that one also.

Mr. GARD. Did these indictments all relate to the same circumstances?

Mr. OPPENHEIMER. Yes; exactly the same wording.

Mr. GARD. The same act charged?

Mr. OPPENHEIMER. The same act, and the same case, except they put in this additional overt act in the last one, which the court held could not be an overt act.

Mr. GARD. So there have been seven indictments, trying to get one to stick; that is about the sum total of it, is it not?

Mr. OPPENHEIMER. Yes.

Mr. CARLIN. Is there any indictment pending against you now?

Mr. OPPENHEIMER. That last one was dismissed by Judge Pope last Saturday. They have taken an appeal to the Supreme Court from that decision.

Mr. CARLIN. Is that indictment in reference to your conduct in bankruptcy proceedings?

Mr. OPPENHEIMER. Yes.

Mr. CARLIN. Do you have a very large practice in bankruptcy proceedings?

Mr. OPPENHEIMER. I did have.

Mr. CARLIN. Have you that practice now?

Mr. OPPENHEIMER. I have no practice now, practically.

Mr. CARLIN. You have not filed any petitions in bankruptcy lately?

Mr. OPPENHEIMER. Not in the last two years. I have not done so much in filing petitions for bankrupts. I have handled probably in four years only about six or seven cases of that kind; but I have represented a great many merchants and bankers in this city for whom I filed petitions against bankrupts. My principal business was to file petitions against bankrupts and prosecute the cases as much as I could.

Mr. GARD. Involuntary bankruptcy?

Mr. OPPENHEIMER. Involuntary bankruptcy; yes.

Mr. WALSH. You want the committee to understand, then, that in the matter of the consideration of these indictments, you made an effort to appear before the grand jury?

Mr. OPPENHEIMER. Yes; I wrote the grand jury—well, to give you the history of it, at the first indictment, Mr. Marshall gave me a hearing, and I convinced him by documentary evidence that the charge was unfounded. I then asked that if any charges were brought against me that I be given a further hearing. When that was refused I asked Mr. Wood to permit me to go before the grand jury, and he said, "No; we are going to try this case before a petty jury. We do not want any further explanations." I wrote a letter, then, later to the grand jury on one of these other indictments, and asked them to hear me before handing down an indictment. I wrote a letter for the first indictment also, for that matter, but it was too late, and they gave me no hearing at all—no answer to the first letter. At last, I got before the grand jury, but when I started to tell my story, I said my letter contained the provision that the district attorney vacate while I was giving my story, because I did not care to place myself any further in his hands, and as a citizen I merely wanted to go to the grand jury, and the grand jury had a right to hear any citizen without the district attorney. When they saw that was in

my letter, Mr. Wood said, "Oh, no." I said, "That is for the grand jury to determine"; and he said, "Well, they will determine it pretty quickly. You wait outside," and I waited outside, and they did determine it very quickly. He was in there and he came out in a minute afterwards, and he said, "They will not hear you unless we are present"; so I was not heard.

Mr. WALSH. That person was who? Mr. Wood or Mr. Marshall?

Mr. OPPENHEIMER. That was Mr. Wood.

Mr. WALSH. At one time did you appear as a witness before the grand jury in the case of the United States *v.* Kugel?

Mr. OPPENHEIMER. Yes.

Mr. WALSH. At that time did you hear anybody or any district attorney give any direction to the stenographer not to take down any of your statements?

Mr. OPPENHEIMER. Yes.

Mr. WALSH. Tell us about that.

Mr. OPPENHEIMER. In asking a question, when I tried to go into the facts the direction would be made to the stenographer, "Don't take this down," or "Don't take that part down," so that when I came to testify in the case itself the questions that were put to me did not contain—that is, the district attorney, Mr. Wood, would read off a question and my answer, and it did not contain my answer; it was not a true record, and I told him so, and that aggravated them. of course, very greatly.

Mr. NELSON. What was the name of the stenographer? Can you identify the stenographer perhaps now?

Mr. OPPENHEIMER. No. I don't think I ever saw him. I might be able to find that out, but I don't know it.

Mr. CARLIN. Who was the assistant district attorney?

Mr. OPPENHEIMER. Mr. Wood—Mr. Wood and Mr. Hershenstein together.

Mr. WALSH. Do you know of any arrangement made at the time of your appearing as a witness in the first trial of the United States *v.* Kugel, that you were not to be asked that you were under indictment?

Mr. OPPENHEIMER. Yes; Mr. Moss and Mr. Benjamin Slade. I had informed them that it was usual to bring such things out here, unless provision is made against it, but that it was illegal and improper, but the judge merely told the jury to take no notice of it, although the harm had been done, and they went to see Judge Learned Hand in regard to it, and Judge Learned Hand said, "Of course that is improper; do not do it," and Mr. Wood did not do it during that trial. During the second trial Mr. Wood was then asked by Mr. Moss and Mr. Slade that the same stipulation remain, which, of course, was unnecessary because it was improper for any attorney to ask it anyhow, whether a witness was indicted, and I went on the stand—

Mr. CARLIN (interposing). Upon the theory that the record was the best evidence?

Mr. OPPENHEIMER. Oh, no; on the theory that it makes no difference. You can not bring out whether a man is indicted; an indictment is no conviction.

Mr. CARLIN. Unless there was a conviction?

Mr. OPPENHEIMER. Yes; and cases are reversed in the State courts here repeatedly for things of that kind. There was one last week—an attorney here.

Mr. CARLIN. Then they only agreed not to ask you the question because the question was improper?

Mr. OPPENHEIMER. Yes; and then he did ask it.

Mr. WALSH. He did ask that question the second time?

Mr. OPPENHEIMER. Oh, yes. In the grand jury he brought out that a certain question I was asked, I did not want to answer because I was under indictment.

Mr. WALSH. What did your counsel do then, if anything?

Mr. OPPENHEIMER. Moved to declare it a mistrial, and the judge said, "Oh, no. I will tell the jury not to take any notice of it." Judge Learned Hand afterwards said it was a dastardly thing to do. That is all.

Mr. NELSON. In this continued indictment of you have you any knowledge of any witnesses against you having been brought before the grand jury?

Mr. OPPENHEIMER. Yes; Mr. Harry Siegel has always stated that he was not only brought before the grand jury, but browbeaten in a very inhuman way to fix up a story on me. He even said to me that they had written his statement out and had included other things, which he refused to sign, and told them that he had never said it. He said that they had him face other witnesses in the grand-jury room, and that the language that was there used is unfit for publication, and that they had threatened him that unless he would, as he puts it, "come across on Oppenheimer," that he himself would be indicted.

Mr. NELSON. This conversation you had with him?

Mr. OPPENHEIMER. Yes. He has made statements to that effect to me. He has made affidavits to that effect.

Mr. GARD. What is his name?

Mr. OPPENHEIMER. Harry Siegel.

Mr. GARD. Where does he live?

Mr. OPPENHEIMER. He lives in Brooklyn. I have his address. He works up here in Broome Street.

Mr. NELSON. Were these threats made in this private room where they rehearse the witnesses?

Mr. OPPENHEIMER. Oh, yes.

Mr. NELSON. Or was it before the grand jury?

Mr. OPPENHEIMER. According to him, everything of that kind occurred also before the grand jury.

Mr. NELSON. That is what I want to know.

Mr. OPPENHEIMER. He was told to his face before the grand jury that "You are a damn liar and a perjurer," and such things.

Mr. NELSON. Have you any knowledge of other witnesses being brought before the grand jury?

Mr. OPPENHEIMER. Why, there are witnesses whom I do not think would testify to the real truth here. There is one of them that was indicted with me, who has said to me privately that they would ask a hundred questions and then take down one question before they took them to the grand jury, and then ask them that one question before the grand jury, which would make the thing seem entirely different.

Mr. NELSON. He has told you that?

Mr. OPPENHEIMER. Yes.

Mr. NELSON. What is his name?

Mr. OPPENHEIMER. Isaac Anderson.

Mr. NELSON. Give his address, if you can.

Mr. OPPENHEIMER. West One hundred and forty-second Street. Let me see if I have his address. Maybe I have Siegel's address, also. Siegel's address is 102 Hart Street, Brooklyn.

Mr. GARD. Do you charge that these numerous indictments returned against you were returned by the district attorney's office through personal malice against you?

Mr. OPPENHEIMER. Partly that and partly malice against all bankruptcy practitioners, which was expressed to me personally by Mr. Wood.

Mr. GARD. What did he say?

Mr. OPPENHEIMER. He said "I am going to get after them." He told me an instance of where he himself had represented a corporation, and he got \$150, and the attorneys whose names he even mentioned got \$500, and that he was going to get after them; that they got it all and the other fellows get nothing.

Mr. GARD. Did you have any information about this being a personal attack on you?

Mr. OPPENHEIMER. Why, after my testimony in the Kugel case it certainly became very, very personal. There was antagonism of the severest kind.

Mr. CARLIN. You mean personal in its effect?

Mr. OPPENHEIMER. Both in its effect and in its object.

Mr. CARLIN. What did they have against you?

Mr. OPPENHEIMER. The fact that I had testified against them and had shown up what they had done in the grand-jury room and in their personal conversations, showing that, to my mind, they had done something wrong.

Mr. CARLIN. You mean you had testified against them in the Kugel case?

Mr. OPPENHEIMER. Yes, sir.

Mr. CARLIN. Were you allowed to testify in the Kugel case as to what had happened in the grand-jury room?

Mr. OPPENHEIMER. Yes.

Mr. CARLIN. The committee will take a recess now until 2 o'clock.

Mr. Oppenheimer, we will have to ask you to return at 2 o'clock.

(Whereupon, at 1.05 o'clock p. m., the subcommittee took a recess until 2 o'clock p. m.)

AFTER RECESS.

(The subcommittee reconvened, pursuant to the taking of recess, at 2 o'clock p. m.)

TESTIMONY OF HERMAN H. OPPENHEIMER—Continued.

Mr. CARLIN. Mr. Oppenheimer, in a memorandum before the committee it is stated that Mr. Marshall had, in public speeches and on other occasions, said that he intended to break up this bankruptcy ring in New York. Were you familiar with that statement?

Mr. OPPENHEIMER. I am familiar with the statement, yes, sir; I am not sure where it was made. I think it was about two years ago,

before the Jewelers' Association, if I am not mistaken, but it was publicly printed; I do not know the particulars.

Mr. CARLIN. Was it your idea that these indictments were found against you because of the impression of the district attorney's office that you were a part of that ring?

Mr. OPPENHEIMER. Why, absolutely; that is what all the papers published in the statements.

Mr. CARLIN. The papers did publish that in connection with your indictment?

Mr. OPPENHEIMER. Oh, yes; I have those clippings.

Mr. CARLIN. Did you come in contact with Mr. Marshall with reference to your matters?

Mr. OPPENHEIMER. Yes; in the first part of it there where I made a statement to him and showed him that the indictment was ridiculous. I made that statement to him personally on two or three occasions. I made a statement to him showing the facts were such that to indict me would be a wrong thing; and I told him that any other charges that these poor fellows would put on me to save themselves I could refute in the same way if he wanted to give me an opportunity, but I did not get that opportunity afterwards. My client got it, and he pleaded guilty and put it on me.

Mr. CARLIN. Were you indicted as the result of testimony of your own client?

Mr. OPPENHEIMER. Oh, yes.

Mr. CARLIN. Who was your client?

Mr. OPPENHEIMER. Jack Samuels. There were nine indicted; one of them was this Anderson, who could not afford even the price of a lawyer, and when I refused to assist him, because of my position, he simply went in and gave them whatever they wanted; and then the bankrupt, the same way. He went in and made a long statement to them and pleaded guilty, but sentence was suspended for one year; the term was extended to sentence him and then they let the year run out without sentencing him. Now, that year is out since last November.

Mr. CARLIN. That is what I wanted to get at, whether you were indicted by reason of the activities of the district attorney's office or as the result of the so-called squealing on the part of one of your own clients.

Mr. OPPENHEIMER. Oh, no. That came afterwards. The indictments came first, and then the so-called squealing of the poor fellows who were indicted that could not afford attorneys, and had a case to fight against the Government, and could get themselves out of it by putting it on some one else. Then I was indicted.

Mr. CARLIN. Then they squealed on you?

Mr. OPPENHEIMER. They did not squeal; they put up a story on me. If it were squealing I would not care.

Mr. NELSON. You say "they." Was there more than one client involved?

Mr. OPPENHEIMER. No; he was the one that put the story up on me, but others testified, and I presume their—

Mr. NELSON (interposing). Other clients testified?

Mr. OPPENHEIMER. Oh, no.

Mr. NELSON. Just one client?

Mr. OPPENHEIMER. Just one client—and this man Anderson was also indicted—was supposed to be in the conspiracy. There were 9 or 10 of us indicted, and Anderson was an opponent to my client, and I was fighting Anderson for my client, but when Anderson was indicted, he had neither funds nor friends to fight for him, and he went in and made a statement, too, and his indictments were never tried, and, as I understand, they are to be dismissed for his statements.

Mr. NELSON. You just stated that one of your clients testified.

Mr. OPPENHEIMER. Yes; Jack Samuels.

Mr. NELSON. You said that Anderson was a client?

Mr. OPPENHEIMER. He was never my client.

Mr. NELSON. Who was your client?

Mr. OPPENHEIMER. Jack Samuels.

Mr. CARLIN. Jack Samuels?

Mr. OPPENHEIMER. Yes.

Mr. CARLIN. Jack did squeal on you?

Mr. OPPENHEIMER. Jack told a story which involved me.

Mr. CARLIN. Whether he told a story or not is one of the issues involved in the trial, when you have a trial?

Mr. OPPENHEIMER. Yes.

Mr. CARLIN. Did you file the petition for Samuels?

Mr. OPPENHEIMER. No. I represented Samuels. A petition was filed against him by others; by Mr. Dittenhoefer, Judge Dittenhoefer's son.

Mr. CARLIN. What is the character of the conspiracy charged against you in connection with Samuels?

Mr. OPPENHEIMER. That he concealed assets with my assistance and direction. The amount of it is set forth as \$1,000, but it is supposed to be more, of course.

Mr. CARLIN. Did he conceal assets?

Mr. OPPENHEIMER. Well, he admits that he concealed assets now.

Mr. CARLIN. And you believe that part of his testimony?

Mr. OPPENHEIMER. I certainly must believe it. I know I had a hard job getting \$5 or \$6 out of him at a time during the time that he was concealing the assets; but if he says he concealed them, I presume he must have concealed them.

Mr. CARLIN. You tried to get \$5 or \$6 out of him?

Mr. OPPENHEIMER. Yes; for printing in his case, and so on.

Mr. CARLIN. Was the printing \$5 or \$6?

Mr. OPPENHEIMER. Six dollars—\$6.50—it was for an appeal up in the court of appeals, and I have his letters to me, and my letters to him telling him I would not go ahead unless I could get it—and it took all kinds of force to get it—and he now admits that he did steal, I believe \$10,000. During the entire time that he stole that he pleaded poverty and practically lived at my expense, so far as his lunches and car fares were concerned, because he did not have them—he said so, anyhow. I think it would be very interesting to get his statement—just for the committee; not for me—what he did say to the district attorney. I understand it is such a statement as no one could believe, and the district attorney had him indicted for perjury and then took his statement against me.

Mr. NELSON. Is that perjury indictment still pending?

MR. OPPENHEIMER. I don't know that he has ever pleaded to it. It has never been tried. That was in February, 1912, that the indictment was brought.

MR. CARLIN. That was before Mr. Marshall's time?

MR. OPPENHEIMER. Oh, no.

MR. CARLIN. 1912?

MR. OPPENHEIMER. 1914, I meant to say—two years ago.

MR. CARLIN. Since these indictments you have not been any part of the bankruptcy ring, so called?

MR. OPPENHEIMER. No; I have not been at any time any part of any bankruptcy ring. I enjoyed the confidence of every judge of this court before that time. I represented Judge Hough as receiver before he was judge, and I have been appointed a receiver and an officer of this court by every judge who sat in it, except those that sat since 1914—appointed since 1914. I have been trustee of 50 or 60 estates in this court, and I have never had a charge of any kind or suspicion of any kind against me.

MR. NELSON. Is it asserted as a fact by the office of the district attorney now that the bankruptcy ring is ended?

MR. OPPENHEIMER. I have not heard any such statement. I do not know.

MR. CARLIN. Was it a matter of common knowledge that there was such a ring?

MR. OPPENHEIMER. Not to my knowledge, nor to any of the judges of this district. There were probably 50 attorneys who did the large proportion of bankruptcy work in this city, and out of some 17,000 cases I think there were charges against attorneys in about 4 or 5 or 6, and those were not the principal practitioners. If I class myself as one of them, I was probably on the very outside of any such thing as a ring. I was one of the small ones. None of the others were of the principal practitioners in bankruptcy. They were in bankruptcy cases, but, like Mr. Kugel, he had probably five cases in his entire experience; but the judges of this court, who are probably the best judges of whether there was such a thing or not, seemed to have a great deal of confidence in the attorneys practicing before them.

MR. WALSH. Mr. Oppenheimer, in connection with this statement of Mr. Marshall's about prosecuting the bankruptcy ring, were there a number of lawyers indicted?

MR. OPPENHEIMER. Oh, yes.

MR. WALSH. How many, do you know?

MR. OPPENHEIMER. Why, as I said before, about four or five.

MR. WALSH. Were any of them convicted?

MR. OPPENHEIMER. No. The only one who was convicted was a man who was not an attorney at the time he was supposed to have committed the crime. He had been an attorney years before, and he was convicted of a crime which he had committed after he had ceased being an attorney. I believe he resigned, or something of that kind, his attorneyship in the State courts. Oh, there was one attorney convicted. I beg pardon. That was not under Mr. Marshall's régime, though. That was some 10 or 12 years ago—Radin.

MR. NELSON. You stated in your former testimony, before dinner, that you did not have any practice now—bankruptcy practice.

MR. OPPENHEIMER. Practically; yes.

Mr. NELSON. Did you mean to have the committee understand that the effect of the treatment you received has destroyed your practice, or that in some other way the business has left you?

Mr. OPPENHEIMER. The effect of the unenviable position of having seven indictments, one after the other, against me has absolutely destroyed all my business. The class of clients I represented could not afford to have an attorney representing them who was under one cloud after the other.

Mr. WALSH. Would you care to name for the benefit of the committee any of your former clients?

Mr. OPPENHEIMER. I do not see why not. I represented for the past 10 years A. G. Hyde & Son; Bacon & Co.; Farish, Stafford & Co.; Knauth, Nachod & Kuhne, the bankers; William Anderson & Co.; and the Manufacturers' Commercial Co. I can give you a couple of dozen more, if you want them, but those are some of the more prominent.

Mr. WALSH. Are those concerns that have a great deal of business?

Mr. OPPENHEIMER. They all had more than \$5,000,000 of business a year, and Knauth, Nachod & Kuhne do an international banking business of hundreds of millions, and Bacon & Co. do a business of probably \$12,000,000, and A. G. Hyde & Son do a business of seven or eight million dollars, and Farish, Stafford & Co. do a business of five or six million dollars per year, and the Manufacturers' Commercial Co. do a business of twenty or thirty million dollars.

Mr. NELSON. How old a man are you?

Mr. OPPENHEIMER. Forty-two.

Mr. NELSON. How long have you practiced?

Mr. OPPENHEIMER. Eighteen years.

Mr. CARLIN. These clients have all left you?

Mr. OPPENHEIMER. For all practical purposes; I do not get their business. I presume they have left me. One or two of them have told me that, under the circumstances, they did not care to have me, and the others are evidently friendly, but I do not do any business for them.

Mr. CARLIN. You may stand aside, Mr. Oppenheimer.
(Witness excused.)

EXHIBIT No. 24—FEBRUARY 29, 1916.

NEW YORK, *March 2, 1916.*

HONORABLE SIRS: When on the witness stand I was asked whether the indictment against me, changed after it had been voted by the grand jury, was changed in any other respect than by the addition of certain words, and for the moment I did not think to point out the following:

When the grand jury voted the indictment November 20, 1914, it alleged that the indictment continued to that date; when the new indictment was handed up November 23 it alleged the continuation of the conspiracy to November 23, although not a single witness was called between the 20th and the 23d, and the grand jury didn't even vote on it on the 23d. In fact, all the dates were changed to the 23d.

May I also respectfully call your attention to the calling of witnesses like Mr. Stanchfield, Mr. Wise, et al.? They are all the friends who are treated well; how can they be expected to impeach Mr. Marshall?

Contrast the action in Mr. Wise's case, of a United States attorney submitting to an outside attorney whether Mr. Wise's client committed a crime to his refusal to give me a hearing in person or before the grand jury and you see the difference. It is just liking calling Mr. Battle. His name doesn't even appear as counsel in the records in many cases in which he has worked wonders.

Take the McFadyean case in April, 1915. Mr. Hull was attorney of record, yet Mr. Battle was paid at least \$3,500, besides another large amount, and although it was a most flagrant case, the defendant knew in advance that if he pleaded guilty he would get only six months at Blackwells, which he got, and was then allowed to leave without pressing other indictments or charges against him.

So Mr. Stanchfield's testimony, re Duveen and Rosenthal—both got off with fines, although the Government was defrauded of millions, while H. J. Dietz, for the same kind, with less than \$10,000 defrauded, got one year and one day at Atlanta, February 1 or January 31, 1916. Dietz didn't have Mr. Stanchfield.

So, too, the methods of Mr. Wood, in excusing jurors of the Jewish faith without questions, so that despite the jury lists containing one Jewish name out of four the average of Jews on juries in cases tried by Mr. Wood (and in some cases tried by other assistants he purposely only examines the jury, as in the Nathan Friedman case) the average Jew left on the jury is not one to six, while in no case is the original percentage maintained. But the real grievance is the brazen way it is done—without questions, just challenges equal to saying, "You are a Jew; I don't want you."

Yours, very respectfully,

H. H. OPPENHEIMER.

Mr. CARLIN. Call Benjamin Slade.

TESTIMONY OF BENJAMIN SLADE.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Slade, please give your full name and occupation and address.

Mr. SLADE. Benjamin Slade, attorney at law, New Haven, Conn.

Mr. CARLIN. Are you familiar with the indictment against Kugel?

Mr. SLADE. I am; yes, sir.

Mr. CARLIN. And the circumstances attending it?

Mr. SLADE. I believe that I am.

Mr. CARLIN. Are you one of his counsel?

Mr. SLADE. I can hardly answer that question directly. I was counsel for Mr. Feldman, who was a brother-in-law of Mr. Kugel's, and a codefendant in the original proceedings in which Kugel and his brother-in-law were indicted together for conspiracy, and, as a result of being counsel for Mr. Feldman, I indirectly became inferentially counsel for Mr. Kugel because of my association with the case and the association with Mr. Kugel's counsel, Mr. Frank Moss, the interests of both defendants being identical in character.

Mr. CARLIN. You were not retained by Kugel?

Mr. SLADE. No, sir; not directly. I appeared for Mr. Feldman originally. I am now referring to the first trial.

Mr. CARLIN. Did Kugel compensate you, or Mr. Feldman?

Mr. SLADE. Mr. Feldman compensated me.

Mr. CARLIN. In that connection, did you have any communication with the office of the district attorney?

Mr. SLADE. I did; yes.

Mr. CARLIN. With Mr. Marshall or his subordinates?

Mr. SLADE. Mr. Marshall, personally.

Mr. CARLIN. Mr. Marshall, personally?

Mr. SLADE. Yes.

Mr. CARLIN. Tell us what occurred between you and Mr. Marshall.

Mr. SLADE. May I have the privilege of making the preliminary statement that led on to the conference with Mr. Marshall?

Mr. CARLIN. Yes.

Mr. SLADE. As a result of the first trial the Government in that trial contended that Mr. Kugel and Mr. Feldman were coconspirators with the original bankrupts, in that they attempted to conceal assets belonging to the bankrupt estate. Some of the assets that the Government claimed were concealed as a result of the conspiracy were by the Government claimed to have been traced to Boston, Mass. A lawyer named Cohen was produced as a Government witness, and in his examination it appeared that one of the bankrupts—I do not recall whether it was Rogal or Brass—one of the two original bankrupts—appeared at his office with his mother-in-law, and claimed that certain goods which were then located in Boston were sent by the bankrupt to her as security for an antecedent debt. This lawyer Cohen had this conference at his Boston office, and during the conference and at the time the conference took place this lawyer made a memorandum of the facts claimed by this bankrupt and by his mother-in-law, and he then advised the mother-in-law not to return the goods to the trustee in bankruptcy, as he claimed the goods belonged to the estate, but advised her to retain the goods.

The Government during the trial of the case, as my recollection serves me, contended that those identical goods were part of the goods concealed as the result of the conspiracy. This lawyer testified that he was served with a subpoena to appear before the grand jury in New York during the time that the Government was investigating this case, and in response to the subpoena he came to New York, and, instead of being taken to the grand jury, he was taken into the office of Samuel Hershenstein, an assistant district attorney; that he related to the assistant district attorney the facts respecting the conference, and, to corroborate his memory of the conference, he produced this memorandum; that the district attorney tore the memorandum up, and threw it in the wastebasket, and suggested to Cohen he was not wanted; that he might go back home, and he was not called before the grand jury; so from the trial of the case it clearly appeared that the information that Cohen imparted to the district attorney, plus the contents of the memorandum, that the information the district attorney then acquired was inconsistent with the Government's theory of Kugel's guilt, and for that reason the memorandum was destroyed. In the same case, and during the first trial, the young lady bookkeeper called in; I think her name was Curtis; and this young lady undertook to identify a young man named Goodman, who was in the express business, as being the man that called at her employer's place of business in Philadelphia, at the storage house, and she undertook to identify this young man as being the man. Goodman had testified that he was never in Philadelphia in his life, and did not know the young lady, and did not know anything about the storehouse, or anything in relation to the goods.

Upon cross-examination it appeared that this young lady, as I recall it, was communicated with in Philadelphia, and during the communication—whether it was by letter or telephone I do not recall—she was then informed that the young man, the expressman, would be at the district attorney's office on a certain future day, and she was requested to come to New York on the same day. That

when she came here she was escorted into Assistant District Attorney Hershenstein's office and had a conversation with him, and, in substance, he said to her that the district attorney's office, in the preparation of the case, located the young man that moved the goods, and that he was outside. That this young lady believed what the district attorney had said to her and relied upon what he had said to her, and when she went out she saw this young man, Goodman, sitting in the anteroom of the district attorney's office, and she then said, "Yes, that is the man." She was then inquired of whether or not, prior to the time that she came to the district attorney's office she was requested to describe the man that she believed moved the goods, and she then said that she believed he had a blond mustache and that he was a man of a certain build—I don't recall the details of it; but it appeared from her testimony that the so-called identification should have been treated with the greatest amount of caution. After the case was finished Mr. Justice Hand, in charging the jury, in substance, said that—

Mr. NELSON (interposing). That was the Kugel case?

Mr. SLADE. The Kugel case, yes—in substance, stated that a United States judge has the right to express his opinion upon the facts—I am not, perhaps, quoting the exact language, but that was the substance of it—and that he would avail himself of that right and say to the jury that if he, the court, were called upon to determine the credibility of Rogal and Brass and Mrs. Rogal, the three most and only important witnesses that the Government offered, he would not believe them. The jury took the case, and they acquitted my client, and disagreed as to Mr. Kugel. Shortly after that, or perhaps some months after that, I got information—I do not recall whether through some one in my office, or through the official legal paper, called the "Law Journal"—that the Kugel case was about to be retried, or that it was intended to retry it. Mr. Kugel, before that information came to me, enlisted my professional services in case the case would be retried, and I became interested as one of his counsel in the case at that time officially. Upon receiving the information of the probability that the case would be retried I personally called upon Mr. H. Snowden Marshall at his office and, as near as my recollection serves me, I, in substance, informed Mr. Marshall of the facts that I have already related that occurred during the trial of the case, and, in addition to that I informed him that during the trial of the first case evidence was introduced which clearly demonstrated that a lawyer named Weinberger, who was a roommate of Mr. Hershenstein's, the assistant district attorney, was brought into the Rogal & Brass case after the late Col. Gruber gave some professional advice to the bankrupts in relation to their conduct, as to what they ought to do; that he dropped Col. Gruber and employed this man Weinberger, a roommate of Mr. Hershenstein's; and that Mr. Weinberger then took the bankrupts to the assistant district attorney; and these bankrupts then agreed to plead guilty to conspiracy and plead to perjury, but to turn witnesses for the Government, and that it was upon the strength of the claims they made against Mr. Kugel that he was ultimately indicted. I then said to Mr. Marshall, "I am here because I have known Mr. Kugel as a boy—as a newsboy in the city of New Haven—for many years. I have followed his career with considerable interest, as an older

member of the bar, and because of the knowledge I have gained in the first trial of the case, I felt called upon, Mr. Marshall, to relate to you the facts in the case. The boy is a poor boy; this case has already ruined his business and ruined his health; that he is not able to go to another trial; he ought not to be put to the expense of another trial, unless justice requires that that should be done."

I then related to him more in detail the facts that were elicited and established by the evidence during the first trial, and Mr. Marshall said to me, "Write me a letter." I then said to Mr. Marshall, "Mr. Marshall, Mr. Kugel was too poor to purchase the minutes on the first trial. Will you be good enough to instruct your subordinates to let me have access to the original minutes, so that I may, in substance, state to you the material facts disclosed by the evidence, and thereby avoid the necessity of you going over this long record yourself, because you are a busy man?" Mr. Marshall replied that he had no objection to my having the minutes for the purpose indicated, and referred me to his Mr. Wood or Mr. Hershenstein. He then requested that I write him a letter setting forth the facts. In pursuance to that suggestion, I went to Mr. Wood—no, to Mr. Hershenstein—and, in substance, presented the statement of Mr. Marshall respecting the minutes. Mr. Hershenstein—I do not recall whether the same day or the following morning—stated that all he can say is that Mr. Wood refuses to give us access to the minutes. Upon having received that word from Mr. Hershenstein, I dictated, signed, and delivered to one of the clerks of the office this letter, with directions that he personally deliver it into the hands of Mr. Marshall.

MR. CARLIN. Have you got a copy there?

MR. SLADE. Yes; your honor.

MR. CARLIN. You can just file that with the clerk. You need not read that. What we are trying to get at is the fact, if there be such, of any misconduct on the part of Mr. Marshall or the subordinates in his office, and we would like you to point out now, from your experience with that matter, such misconduct as you know of.

EXHIBIT No. 25, FEBRUARY 20, 1916.

NOVEMBER 12, 1914.

HON. H. SNOWDEN MARSHALL,

*United States District Attorney,
Post Office Building, City.*

MY DEAR MR. MARSHALL: After the short interview I had with you to-day, and acting upon your suggestion, I personally conferred with Mr. Hershenstein, one of your assistants, and stated to him in substance that you said, "If you can arrange with Mr. Hershenstein or Mr. Wood to have access to the minutes in the Kugel case, that I had no objection." Mr. Hershenstein replied that all he knows is that Mr. Wood refuses to give us access to such minutes.

It is not for me to criticize your subordinates because of their refusal to give us access to such minutes. It is regrettable, indeed, that Mr. Kugel was financially unable to meet the expenses of a copy of such minutes during the trial and is still unable to pay for such minutes, the stenographer asking between five and six hundred dollars therefor; and I believed that your department ought to have been willing to give counsel for the accused such assistance as is within its power for the purpose of enabling the accused to properly present his case at any stage thereof, whether for your consideration or the trial. I will therefore endeavor without the benefit of the minutes to give you my views respecting the case as I gathered such views upon the first trial of the cause and as one of the trial counsel.

In the first place, the Hon. Judge Hand, who presided over the first trial, specifically stated to the jury in his charge, among other things, that if he

was called upon to determine the credibility of Rogal, Brass, or Mrs. Rogal, the three most important and only important witnesses for the Government, that he would not believe them; and that suggestion from Judge Hand was very well supported by the testimony given by them, particularly upon their cross-examination. Mr. Feldman, who was codefendant with Mr. Kugel, was acquitted by the jury, and from the theory advanced by the Government in the presentation of the case in the first trial it was very evident that the Government claimed that said Feldman was the active participant in the alleged conspiracy; and it was further claimed, and evidence offered to prove, and was, in fact, proven, that Feldman personally moved the alleged secreted goods to two different places, if my memory serves me right in this respect, and yet the jury found him not guilty. It further appeared that Mrs. Rogal, the wife of one of the bankrupts, had many of the goods in question stored in her own name in various warehouses, and subsequently removed such goods and re-stored them under a fictitious name. She admitted, if I recall correctly, that her conduct in respect to these goods was due to instructions received by her from Rogal.

A lawyer named Cohen, from Boston, was called as a witness by the Government, and on examination of the testimony given by him, as the same undoubtedly appears in the transcript. It will appear that this young man was summoned as a witness, and he appeared at the office of the United States district attorney and had presented to your representatives who was interrogating him respecting his knowledge in relation to some of the goods stored, which were located in Boston, and this young man made a statement which was inconsistent with the theory adopted by your department in respect to the alleged guilt of Mr. Kugel; and in corroboration of the statements presented by this young man he produced a memoranda made by him at his office in Boston substantially to the effect that the bankrupt's wife and her mother appeared at his office in Boston and claimed that the identical goods there stored belonged to Rogal's brother-in-law, etc. This witness under oath stated that the memoranda above referred to was submitted for inspection to the representatives of your department, and he destroyed said memoranda—threw it in the wastebasket—and told the young man that his presence was no longer required.

It is not for me to attempt to criticize this conduct. I feel reasonably safe in submitting it to you for such serious consideration as in your opinion such conduct should receive. Possibly it was due to the inexperience of the young man that handled this matter or to some other cause that I do not feel at liberty to mention.

It also appeared from the testimony of both Rogal and Brass that each attempted to take property belonging to the partnership without the knowledge of the other, and such property was placed and concealed in various places, including the fireplace in the home of one of the bankrupts, who was, as stated, one of the chief witnesses for the Government.

The Hon. Edwin S. Thomas, ex-Mayor Kline, the United States district attorney from Brooklyn, Senator Isbell, and various other persons of eminent standing, who were well acquainted with Mr. Kugel, appeared in court and testified as to his good character, standing in the community, honesty, and integrity.

I am informed, and believe reliably, that the jury in the first trial stood 11 to 1 for acquittal, and that information was given to me by two of the jurors the evening that they were discharged from further attendance. Since then your office intimated on various occasions that my information in this respect was inaccurate. I assume that it is not a very difficult matter to have your department place itself in touch with one or more of the jurors who served upon that panel and from them ascertain how the jury stood. If in your opinion such information would be of any value to you to determine what course your department should now take in respect to a retrial of the case. From my knowledge of the case, I entertain very little fear, indeed, in regard to the successful outcome thereof in favor of Mr. Kugel, but the trial of the cause involves a substantial expense that should not be borne by Mr. Kugel unless such course can not be avoided.

In your opinion, is it so that a young man, a member of the bar of reputable standing, is to be considered worthy of less credit than the bankrupts in this case, who have pleaded guilty to the same offenses and who are still at large without any punishment having been inflicted upon them and who, no doubt, have a personal or other interest to serve, as evidenced by their activities in trying to throw the responsibility for their dastardly conduct upon a lawyer?

Under the circumstances no lawyer, it seems to me, would be safe in the practice of his profession when those charged with the administration of the criminal laws readily rely upon the word of bankrupts who are self-condemned against a lawyer of such standing. I do not intend to suggest that there are not some members of the bar who are not guilty of such or similar offenses, and public justice requires that they should be discovered and punished, but Mr. Kugel is not in that class.

I feel reasonably certain, from my knowledge of you personally, that if the responsibilities of your office permitted you to read the transcript of the testimony in the first trial that it would not require much time for you to conclude that the interests of justice do not require to subject Mr. Kugel to the expense of a second trial. Judge Hand's entire charge, if you can have access to it, will assist you, in my opinion, greatly in determining the question that I am anxious to submit for your consideration and judgment, namely, that this case should not be retried, and I respectfully suggest that you read Judge Hand's charge for that purpose.

I have attempted in this letter to state the prominent facts for your consideration without going into details and make reference to other facts too numerous to outline in a communication of this character, and particularly because of my knowledge of your inability to find sufficient time to personally consider any lengthy communication.

It is my desire for you to treat this communication in strict confidence, and I assume that you will do so. If the views expressed by me find support in the evidence and you deem the same sufficient, and I trust you will come to that conclusion, then, of course, you will make such directions as in your judgment seem proper.

Respectfully, yours,

(Signed)

BENJAMIN SLADE.

Mr. SLADE. I shall be very glad to give you only such information as I personally have knowledge of. Mr. Marshall's failure to take the slightest notice of the most important facts elicited in the first trial of that case, respecting the connection of Mr. Weinberger and assistant district attorney.

Mr. CARLIN. Your idea is that Mr. Weinberger's employment was an improper employment?

Mr. SLADE. No; your honor. I do not place that construction upon it. I had expressed in my interview, upon Mr. Marshall, the fact that these bankrupts, self-confessed criminals, upon their plea to the crime of perjury and conspiracy together, with their relationship with Mr. Weinberger, a private attorney practicing his profession, and Weinberger's relationship with the assistant district attorney, Hershenstein, who was in charge of this particular case, plus the fact that subsequently these private clients of Weinberger were induced to plead guilty and afterwards appeared as witnesses for Rogal & Brass, required consideration.

Mr. CARLIN. That occurred subsequent to your conversation with Marshall and subsequent to your letter?

Mr. SLADE. No; that occurred prior to the indictment of Mr. Kugel, and those facts were elicited during the first trial. I did not feel justified in characterizing in appropriate language my views, because I believed that Mr. Marshall's official attention having been directed to the facts, he would make an appropriate investigation for the purpose of determining whether the conduct required any consideration or not, and those facts were established through the sworn lips of witnesses during the trial of the first case. Nothing was done at all.

Mr. CARLIN. I am trying to follow you. You say you do not attach any importance to the employment of Mr. Weinberger?

Mr. SLADE. In itself; no.

Mr. CARLIN. Therefore, the fact that he was a roommate of the assistant district attorney did not impress you as being an improper inducement to his employment?

Mr. SLADE. In itself, not in the slightest.

Mr. CARLIN. Now then, let us get your impropriety. Your idea is that you took all of these circumstances together and make that not an act of impropriety but a reason for nonprossing an indictment against your client?

Mr. SLADE. I did not attempt to place that construction upon it. I took the facts that were self-evident, and as disclosed by the evidence in the case, that a lawyer in the practice of his profession, in view of what Judge Hand said to the jury in his charge, required official consideration of the district attorney's office, for the purpose of determining whether a possible serious mistake had been made.

Mr. NELSON. The bearing of your testimony is to show that Marshall had knowledge of Hershenstein's conduct, is that it?

Mr. SLADE. Yes, your honor. That is precisely what I am attempting to convey.

Mr. CARLIN. What was the particular conduct about which you complain of Hershenstein? That is what I am getting at.

Mr. SLADE. The conduct in the first place of the action taken, resulting in the indictment of Kugel upon the testimony of the self-confessed criminals, Rogal and Brass, plus Mr. Hershenstein's conduct in the destruction of what I considered to be a very material bit of documentary evidence, plus his examination of Miss Curtis, plus the trial of the case and what preceded immediately before the case was tried.

Mr. CARLIN. In reference to the documentary evidence, are you aware of the fact that Cohen has testified that it was not material? In effect he said that a copy of one of the things destroyed, was merely the copy of the original letter, and that the original letter was produced at the trial; that the other papers destroyed were simply his private memoranda which would only have been useful in the way of refreshing his recollection as to certain conversations which took place between him and his client, and that he did practically remember everything that was material. How could the destruction of the documents under those circumstances amount to anything?

Mr. SLADE. I was not here when Mr. Cohen testified, and hence I do not know how well his recollection now serves me. The stenographic minutes will tell and substantiate all that I have stated as to my recollection of the importance of that particular bit of evidence, because as I have stated—

Mr. NELSON. Was not that brought out by him in his testimony?

Mr. SLADE. Oh, yes, upon cross-examination; and the district attorney, Mr. Wood, during the first trial attempted to destroy or affect the knowledge or memory of the witness respecting the actual conversation that occurred, and I do not recall whether I personally or whether my associate, Mr. Moss, put the direct question to the witness, "Mr. Cohen, had not that memorandum not been destroyed and it was before you now, would you have any difficulty whatever in recollecting its contents and giving the jury the benefit of the contents of that memoranda?" and he said, "No, sir." I repeat now, upon my professional responsibility as a lawyer, that the testimony

of Mr. Cohen and the contents of that memoranda was about as important a bit of evidence as there was in the case.

Mr. NELSON. Right at that very point, I would like to have you point out to me what damaging testimony to the Government's case was in that evidence, that would lead them to tear it up?

Mr. SLADE. I will endeavor to do so. Mr. Rogal and Mr. Brass, the two principal defendants and the bankrupts, in substance testified that they did undertake to hide goods belonging to their estate in bankruptcy, and that they did that because of the advice they received from their lawyer, Kugel, and that the goods located in Boston were a part of the goods so concealed. That is in substance the material part of the testimony of the bankrupts. Cohen, the lawyer, testified that one of the bankrupts and his mother-in-law then resided in Boston, if that is the location—I would not positively swear to that.

Mr. NELSON. Do not go into so much detail about residence and all that.

Mr. SLADE. That one of the bankrupts and his mother-in-law appeared at his office and claimed that those same goods were sent to her as security for a debt, which in law constituted a preference and a mere preference was not a criminal offense. I trust I make myself clear!

Mr. NELSON. Yes.

Mr. SLADE. And that this memoranda that the lawyer then made was the reducing to writing of the claims that these people made while at his office, upon that subject.

Mr. CARLIN. What the committee is trying to reach, Mr. Slade—and you are lawyer enough to know about what we are driving at—is, we are investigating the official misconduct, if there be any, of one H. Snowden Marshall.

Mr. SLADE. Yes.

Mr. CARLIN. If I understand you, you want to give the impression that Mr. Marshall was guilty of misconduct, because after you related the facts to him that you have related to us, that he did not order a nolle pros of that indictment.

Mr. SLADE. Not at all. My conception of his duty was upon the presentation to him of the facts that I have stated, as they were disclosed by the evidence in the trial of the cause, that Mr. Marshall in his official position should have taken steps to ascertain the actual facts; that he should have taken steps to ascertain the story stated by this lawyer, Cohen, from Boston, under oath, in court; that he should have attempted to ascertain the relationship between Mr. Weinberger and his assistant district attorney, Hershenstein.

Mr. CARLIN. For what purpose?

Mr. SLADE. For the purpose of determining whether proper mental effort was made on the part of one of his assistants to serve a lawful purpose or to serve an improper purpose.

Mr. NELSON. Isn't it highly probable that he did call him into conference and say, "What do you say to all of these things?" and his assistant explained, step by step, everything done? Is not that highly probable?

Mr. SLADE. Ordinarily I would give Mr. Marshall the presumption, but in view of the second trial and in view of the facts that

then came before me, I would not be willing to give him the benefit of that presumption.

Mr. NELSON. Your idea was your client would get the benefit of this communication between you and Mr. Marshall, ultimately, by not having to undergo a second trial?

Mr. SLADE. Not at all. I wanted Mr. Marshall to make a complete, fair investigation, and, as I stated in my communication, if he did that, to take such steps as in his official judgment the circumstances required.

Mr. CARLIN. You were acting, then, *pro bono publica*? You had no idea of benefiting your client?

Mr. SLADE. Yes; I acted in the capacity of a lawyer.

Mr. CARLIN. You thought the facts would justify, after his investigation, entering a *nolle prosequere*?

Mr. SLADE. I certainly did.

Mr. CARLIN. That was your object in communicating with him?

Mr. SLADE. That would have been the direct object accomplished, but I was mainly more interested as a lawyer not to place my stamp of approval of conduct, as disclosed in the first trial of the case, without a specific, full, complete investigation.

Mr. CARLIN. Now, then, your idea of Mr. Marshall's misconduct that he did not investigate the matter, as you asked him to do?

Mr. SLADE. I should not desire to be placed in a position of characterizing Mr. Marshall's conduct in this particular instance. I have performed what I believed to be my professional duty, both as a citizen and a lawyer, by presenting these facts and requesting him to investigate them. Now, with the existence of those facts that I believed could not be destroyed, and for the benefit of all parties concerned and of Judge Hand's opinion respecting the material witnesses in the first trial—and it was the same witnesses that appeared in the second trial—the man that was thereupon tried the second time.

Mr. CARLIN. The indictment is still pending?

Mr. SLADE. No; it was finally dismissed, after a second trial.

Mr. CARLIN. After a second mistrial?

Mr. SLADE. After a second mistrial; yes. The jury disagreed, as I am informed.

Mr. CARLIN. Did you appear in the second trial?

Mr. SLADE. Yes; I did.

Mr. CARLIN. Well, you know the jury disagreed, then, do you not?

Mr. SLADE. I was not present when the jury came in. I can not say, but the record I got is that the jury disagreed: so if it is based on my own personal knowledge I should have to say no, but information when is accurate, no doubt, it is so. I desire to say to the committee, if I may, that on the eve of the first trial, after the case was set down for trial, I was subpoenaed to appear before the grand jury. My stenographer at New Haven was subpoenaed to appear before the grand jury. Many of the witnesses that the defense ultimately intended to call as witnesses in the trial. Mr. Kugel and Mr. Feldman, were likewise subpoenaed before the grand jury, and I had a conference with my associate and my associate took very positive exceptions to the conduct of the district attorney's office in subpoenaing witnesses on the eve of a trial, when there was

no investigation, so far as counsel knew, of any character then pending before the grand jury.

Mr. CARLIN. Did you go before the grand jury?

Mr. SLADE. I did; yes.

Mr. CARLIN. Well, what did they interrogate you about?

Mr. SLADE. Mr. Hershenstein and Mr. Wood were there, and they attempted to interrogate me in respect to some conversations, as I recall it, between Mr. Kugel and myself, and I refused to disclose the conversations, stating the grounds upon which I refused. I was then interrogated in respect to whether or not I saw a certain lady at my New Haven office on a certain day that appeared subsequently to the trial of the case to be the wife of one of the bankrupts, and I refused to answer the inquiry. If you desire to have me state it, I will do so.

Mr. CARLIN. What I am trying to get at is was the grand jury then about to find another indictment against your client?

Mr. SLADE. No; that was the exception we took, because there was then no proceedings of any character pending against Kugel. The indictment had been brought down; the case was already set down for trial.

Mr. NELSON. May I interrupt? Were you brought before the grand jury in the matter in which you were acting as attorney?

Mr. SLADE. Yes, your honor; that was the subject matter that I was inquired about, and that was the subject matter my Connecticut office stenographer was inquired about.

Mr. CARLIN. How did they get a list of your witnesses?

Mr. SLADE. Well, the Government has vast powers, and how they get certain information is a question I can not answer.

Mr. CARLIN. Did they go before the grand jury?

Mr. SLADE. I have been informed that several of them were taken before the grand jury. Whether all were taken or not I can not say.

Mr. CARLIN. Who was taken before the grand jury?

Mr. SLADE. Myself, my stenographer, Mr. Sachs—I understand that Mr. Sachs was then either associated in the same office with Mr. Kugel or was a partner of his. Those are the only names I now can recall, but I believe others were taken.

Mr. CARLIN. What was your idea, then and now, as to the reason for summoning them before the grand jury?

Mr. SLADE. Conformity with what had become a practice here from information that I have gathered here and there as a practicing lawyer. The Government summons a person before the grand jury under the guise of investigating some alleged offense, and they propound inquiries and the stenographer takes them down, and when the same witness subsequently appears on the trial of a case the district attorney pulls out what is supposed to be a transcript of the minutes and interrogates them in respect to the testimony that the witness gives upon the trial of the case; and, second, that by means of this subpoena before a grand jury the Government is beforehand enabled to ascertain what the defense of a man is when he goes to trial.

Mr. CARLIN. Your idea is, then, that the district attorney's office uses the grand jury for the purpose of procuring the testimony in the case of the defendant?

Mr. SLADE. That is precisely my conception, based upon the fact that in the Kugel case the indictment against him having been found a long time before and the issues joined by the plea and the case ready for trial.

Mr. CARLIN. Is this a new practice in New York, or has this been the custom here for some time?

Mr. SLADE. I personally was brought up in the country, and we never heard of such a practice, and my information from lawyers here is that it has become a customary thing here.

Mr. CARLIN. It has been a customary thing here?

Mr. SLADE. I do not know. Since Marshall has been in evidence they say it has been a customary thing.

Mr. CARLIN. What do they say about this custom before he came in office?

Mr. SLADE. I have never heard that particular question discussed.

Mr. CARLIN. Then, you do not know whether he just inaugurated the system or whether he inherited it?

Mr. SLADE. I am unable to say that.

Mr. NELSON. Now, you say they brought intended witnesses. In what way could he separate? Suppose he was just trying to ascertain the truth; he would have to call people that knew about the facts. You might incidentally stumble into the other man's witness without attempting to do so.

Mr. SLADE. No; my conception is this, that a grand jury has certain functions to perform under the guidance of appropriate authorities. If there is any crime committed, or somebody believes that a crime has been committed, it is proper to summon them for examination by the district attorney. With that practice I, as a lawyer, can not find any fault. The fault that I have found with the practice is that no legal, valid reason exists why, on the eve of the trial of a case in court, that the other side's witnesses should be summoned for examination.

Mr. CARLIN. Now, the other side's witnesses—

Mr. SLADE. Meaning the defendant?

Mr. NELSON. Do you mean to say that they had spies or detectives, if you please, watching, and when they saw that you were in conference with some witness coming to your office, that they would then proceed after that to have them brought before a grand jury?

Mr. SLADE. I am sorry that I am unable to definitely answer the process that has occurred to you as to how they ascertain the witnesses.

Mr. NELSON. That being in my mind, Mr. Slade, I want to find out whether this is done with design or by accident?

Mr. SLADE. I have every reason to believe that it was done with design, because every time Mr. Kugel or any of the witnesses would come to my office, or Mr. Moss's office, for a conference, on the eve of the trial in the preparation of the case, I have noticed men connected with the district attorney's office, in their so-called investigating department, in the immediate vicinity of my office, and at times they have followed witnesses that left my office.

Mr. CARLIN. Do you know of any other case in which this was done?

Mr. SLADE. I want to say to the committee that I try very, very few cases in New York. My home is in Connecticut, and I think in my last 10 years I have tried about three criminal cases in my whole

experience in the city of New York; so, personal knowledge I do not possess, but by rumor I do know that the district attorney's office is very active.

Mr. CARLIN. By rumor, what other cases has rumor discussed?

Mr. SLADE. Specific cases?

Mr. CARLIN. Yes, sir.

Mr. SLADE. I could mention lawyers in conferences at the dinner table or at any social gathering, when the conduct of the office is discussed it is almost universally stated, "Well, that is an old trick; they always do that; they break into a defendant's office and take his papers, without a search warrant."

Mr. NELSON. Confine yourself to these two things: First, do you know, of your own knowledge or by rumor, of any other cases where an attorney has been brought before a grand jury in a case pending?

Mr. SLADE. Of my own knowledge, no.

Mr. NELSON. Do you know of any other cases where the witnesses on the other side have been brought before a grand jury the evening before trial?

Mr. SLADE. Of my own knowledge, no.

Mr. NELSON. Do you know of any specific cases that rumor suggests where either of these practices have been involved?

Mr. SLADE. Specific cases by name, I could not state. Let me say this to you—

Mr. CARLIN. Just a minute. You said just now that among the lawyers the talk was, "This was an old trick"?

Mr. SLADE. A customary trick.

Mr. CARLIN. You said an old trick?

Mr. SLADE. Perhaps I did: customary thing to do is the language.

Mr. CARLIN. That is what I am driving at. How old is the custom?

Mr. SLADE. I could not tell you.

Mr. CARLIN. What age does rumor give to this custom?

Mr. SLADE. Having received information in respect to the conduct of Mr. Marshall's predecessor in office, he denied that any such custom was ever employed when he was there. That was Mr. Wise. Now, in the Oppenheimer case I was associated with Kellogg & Rose in the presentation for the court's consideration of the various questions of law that were involved, and in that case they summoned witnesses, and in the preparation of that case Mr. Siegel, who was purported to be one of the witnesses that was examined by the Government, intended to give us the benefit of all the knowledge he had upon the facts, and Mr. Kellogg—

Mr. CARLIN. I want to ask you this: You were counsel for your brother in the indictment against him?

Mr. SLADE. No; Mr. Martin W. Littleton was his attorney—was the attorney for both the young men.

Mr. CARLIN. Excuse me. I thought you represented him in the mistrial.

Mr. SLADE. No; I do not. My attention was just called to another case, in reply to the inquiry as to whether in other cases witnesses were called. In the case of Safford, my recollection is that witnesses were called on the eve of trial. That is the case where I acted as trial counsel.

Mr. CARLIN. What case is that?

Mr. SLADE. That is the case of the United States against Safford, now pending before the United States court of appeals.

Mr. GARD. That is the Rae Tanzer case?

Mr. SLADE. Arising out of that case, and in that case I now recall having been informed that witnesses were followed from our office and from the courthouse, wherever they went.

Mr. NELSON. You do not know that of your knowledge?

Mr. SLADE. My personal knowledge; no, your honor.

Mr. NELSON. Were you acting in behalf of Oppenheimer at any time?

Mr. SLADE. I was one of his associate counsel with Mr. Rose, of Kellogg & Rose.

Mr. NELSON. Will you state to the committee the transaction you had with Mr. Hershenstein as to his being asked before the grand jury whether he had been indicted or not?

Mr. SLADE. Yes; your Honor. During the first trial of the Kugel case the Government presented some testimony which involved what the counsel considered to be a very important fact, and counsel learned that that fact could be disproved by the testimony that Mr. Oppenheimer could give, and Mr. Marshall and I had a conference respecting the advisability of using Mr. Oppenheimer as a witness; but counsel then had knowledge that Mr. Oppenheimer was under indictment and, in order to avoid any unjustifiable prejudice against Mr. Oppenheimer as a witness, I invited Mr. Wood into Judge Hand's chambers on one morning before court convened and stated to Judge Hand that it might become important to put Mr. Oppenheimer on the stand as a witness, because of some facts that he had knowledge of; that in order to avoid the claim that through error or otherwise the question would be asked by the Government as to whether he was under indictment, my conception of the law was, as I said to Judge Hand, that that question was improper; and Judge Hand so stated, that counsel for the Government should not ask that question.

Mr. NELSON. What incidents caused you to take such a precaution that you would bring an assistant district attorney before a judge to caution him against asking him an improper question?

Mr. SLADE. The knowledge that I had of the methods employed in the presentation of cases in open court was inconsistent with my conception and my experience, as a lawyer of 20 years' standing, as to how a case should be presented, as to its fairness and clearness.

Mr. CARLIN. I understood you to say that you had tried very few cases in New York?

Mr. SLADE. Very few cases of a criminal character.

Mr. CARLIN. Therefore you had not an opportunity to observe?

Mr. SLADE. Not as a trial lawyer.

Mr. CARLIN. What reason have you to think that Mr. Wood or Mr. Hershenstein would be guilty of an unofficial practice?

Mr. SLADE. I personally have not tried many cases, but I have been in the court room since the present administration came here, at times interested in the listening to some cases and at times dancing attendance on some civil side of the court, or waiting for a brother or some other lawful action that I may have, and I have heard and observed the conduct in the trial of the cases. I have seen Mr. Wood repeatedly get up in court and hold a paper in his hand and say to a witness in a very forcible tone of voice, "Now,

didn't you appear before the grand jury and didn't you testify to so and so," and quite frequently I would hear the witness say, "Why, no; I never made any such statement." Now, that same experience was repeated in the Kugel case.

Mr. NELSON. Right there, you say that he would ask them questions with reference to what occurred in the grand-jury room?

Mr. SLADE. Yes, your honor; hold what purports to be a transcript, in typewritten form, in his hand and get up there before the jury and before the court and make the statement.

Mr. NELSON. Have you heard them go into details as to actual testimony before the grand jury?

Mr. SLADE. Yes, your honor. I have heard them in the Kugel case, when Mr. Oppenheimer was testifying, and Mr. Oppenheimer replied to one question and said, "You did not read my answer in full." I then made an attempt, a faint effort then to prove and to get before the jury the actual testimony, and requested the court to permit us to do so, and the court ruled that we had no such right; if the jury saw fit to believe that the question propounded was based upon what was contained in the transcript we had no means of rebutting it.

Mr. NELSON. Now, I have not followed you at all. I asked the question whether you knew that they were actually asking witnesses to testify to what occurred in the grand-jury room, and you said yes. Now, you state that the court said they might not.

Mr. SLADE. That is, for the defense; that is, our effort to procure permission.

Mr. NELSON. On their part, do they do it?

Mr. SLADE. Oh, yes.

Mr. NELSON. They will ask question after question. "Did you say so-and-so in the grand jury?"

Mr. SLADE. Yes.

Mr. NELSON. "And now your testimony is so-and-so?"

Mr. SLADE. That is correct. That appears in the Safford case.

Mr. CARLIN. Did they produce the minutes of the grand jury?

Mr. SLADE. The only way I can answer that question is, the district attorney holds a typewritten transcript, and he opens up a certain page and says, "Now, didn't you appear before the grand jury, and didn't you testify as follows?" reading from this typewritten paper. We have no means of knowing whether that particular paper actually represents the correct transcript of the stenographer's minutes or not. We do not know, and that was done in the Safford case on half a dozen different occasions.

Mr. CARLIN. Did you ever take the trouble to inquire of the court whether that was a transcript?

Mr. SLADE. I urged upon the court in the Safford case, upon Mr. Justice Hough, that that was not permissible, that the only time you can use the grand jury's transcripts or the minutes is for the purpose of predicating a charge of perjury, but the court did not agree with me, and the court would not permit us to see the transcript, contending before Mr. Justice Hough that the rule, as I conceive it to be, is that if a witness had testified to a certain isolated fact, that everything he said in connection with that fact which might modify, change, obviate, or qualify the subject matter referred to by the prosecution, that the jury ought to have the benefit of it.

Mr. CARLIN. I understand you to say the court has ruled that the district attorney could examine a witness from a memoranda, which memoranda you could not examine?

Mr. SLADE. That is my understanding in the Safford case. We made an attempt to offer it, to get possession of it, and look at it, particularly in view of the answer given by Mr. Oppenheimer, as I recall it, when he charged the district attorney with not having fully read his answers, and we were not given access to it, and we never ascertained the contents of it.

Mr. CARLIN. Now, Mr. Slade, do you know of any case of misconduct relating to the official duties of Mr. Snowden Marshall, other than what you have enumerated?

Mr. SLADE. If your honors intend to inquire of me of my personal knowledge, I should have to answer in the negative. If you intend to inquire of me of knowledge based upon numerous circumstances—

Mr. CARLIN. We want competent testimony, and you know what that is just as well as we do. If you do not know anything, just say so.

Mr. SLADE. I have endeavored to comply with your honors' suggestion. Let me qualify that last answer. In the trial of the case of the United States against Safford—

Mr. CARLIN. Who was the assistant district attorney that tried that case—Wood or Hershenstein?

Mr. SLADE. Mr. Wood, Mr. Hershenstein, and Mr. Marshall. That is the only case within my knowledge that Mr. Marshall personally participated in. He made the final summation in behalf of the Government in that case, which is the only summation that I have ever known Mr. Marshall to make in a criminal case since he has been district attorney. His conduct in that case would justify my answering your inquiry in the affirmative, that his conduct was inconsistent with the conduct of an official as district attorney.

Mr. CARLIN. In what respect?

Mr. SLADE. It came out in the trial of that case that Mr. Safford, at the time that he was arrested and taken into custody, was brought before the commissioner and a bond of \$15,000 was fixed in a perjury case. That Mr. Safford, instead of being confined in what I understand to be the lawful place of confinement for Federal prisoners, the Tombs, that he was confined in a place called the Greenwich Street police station, and was for that reason inaccessible for anyone that was interested in his behalf. That on Sunday morning, Easter Sunday—Sunday morning, if you will recollect, was a very stormy day, I think one of the worst storms, next to the blizzard, we have seen in New York for some years—this man was dragged through the streets of New York and was taken to the Park Row Building.

Mr. NELSON. Dragged?

Mr. SLADE. When I say dragged, figuratively speaking. He was not dragged along, but he was taken through the streets, and it was snowing.

Mr. NELSON. In a vehicle?

Mr. SLADE. No; walked. He was taken to the Park Row Building and was brought into the office of some man connected with the investigating department secret service, or some other department

connected with the Federal Government. This was on a Sunday. At that time a suggestion was made to him that if he said he made a mistake in identifying Mr. Osborne that he would not be proceeded against.

Mr. CARLIN. Who made that suggestion?

Mr. SLADE. That was the testimony. I am now attempting to give you the testimony and the facts I learned.

Mr. CARLIN. The testimony shows who made the suggestion?

Mr. SLADE. The gentleman in charge of that office, whoever was connected with the Department of Justice as an investigator. He was then brought before the commissioner and a bond was fixed at \$15,000, which, so far as my experience is concerned, and upon inquiry I have made, has never been known in this district before that such a large bond should be fixed in a case of perjury. Then, after he was transferred to the Tombs he, through his lawyer, requested for an opportunity to appear before the grand jury and tell his story, and agreed to, and did waive immunity. Mr. Marshall personally appeared before the grand jury, and Mr. Safford told his story in the presence of the grand jury; and that Mr. Marshall in the presence of the grand jury said to him, in substance, as I recall it "You are a liar; go back to your dungeon." And that grand jury indicted that man. That after the case—after Mr. Safford's indictment—

Mr. CARLIN. Did that appear on the trial of Safford?

Mr. SLADE. Yes, your honor; it did.

Mr. CARLIN. Did Mr. Marshall admit that state of facts?

Mr. SLADE. He never denied it, and I assume, by acquiescence, that must be the fact. If the grand jury's minutes are in existence, as I assume they ought to be, the grand jury's minutes, if this fact was taken down that fact would appear; but Mr. Safford testified to that in the presence of Mr. Marshall, in open court, under oath, before the jury. Then, when Mr. Safford's case was ready for trial, Mr. Engle, his attorney of record, informed me that the case was set down for a fixed day, but instead of that case being tried upon that fixed day it was suddenly shifted before Mr. Justice Hough, who was then trying civil cases before a civil jury; that this Safford case was the only criminal case transferred for trial before Mr. Justice Hough.

Mr. CARLIN. Coming along regularly, what judge would it have been tried before?

Mr. SLADE. I assume before the judge that was holding the criminal part of the court, sometimes one judge and sometimes another, as I understand here, but this case was sent to Mr. Justice Hough.

Mr. NELSON. You have not two kinds of juries? The same jurors are called in a civil case or a criminal case?

Mr. SLADE. No; that is not my understanding of it. I understand that the jury here for the criminal court is drawn and are in attendance on the criminal side of the court. That at times, as occurred last week in a case I was interested in, the panel was exhausted by challenges and we required one or two jurors, and the justice sent out to the civil court and got a couple of jurors to come in as talesmen, and they were accepted.

Mr. NELSON. Keep them distinct?

Mr. SLADE. The civil side of the court is distinct from the criminal side of the court.

Mr. NELSON. I mean the jurors are distinct?

Mr. SLADE. That is my understanding.

Mr. NELSON. And you have two panels of jurors?

Mr. SLADE. That is precisely my understanding. I am unable to definitely state, but I am basing that answer upon my experience in the trial of the case last week and the few criminal cases that I have tried before. After the case was tried and during the trial of the case, Mr. Marshall—it came out in the evidence—had in his possession several reports that he procured by means of a grand jury subpoena from a man named Hannan, who was the owner of a private detective agency and who was employed by my brother David before the civil action against Osborne was instituted to ascertain whether the facts claimed by Miss Tanzer were true, and this Hannan assigned a man named McCullough, who was subsequently indicted with my brother as an alleged coconspirator, to go to various places and make certain investigations and report the finding that he made to his principal, Mr. Hannan, and Mr. Hannan in turn reported to my brother's office as to what facts were ascertained. Mr. Marshall, under this grand jury subpoena, procured from Mr. Hannan duplicate copies, the original duplicate carbon copies of these original reports. These reports contained detailed information of what facts were ascertained and reported to David Slade, before he brought the suit, and the sources from which the information emanated. Mr. Marshall concealed that data—never called Hannan to the grand jury with this information. I want to correct that. He called Mr. Hannan, but did not produce the reports made to the Slades as to the information they gave, and in the trial of the Safford case we made an attempt to get possession, and asked Mr. Marshall to produce them, and they were not produced. Now, the contents of those reports—

Mr. CARLIN. Did the court determine you could not require their production?

Mr. SLADE. No; the court did not get as far as that. In view of subsequent facts that perhaps are of no importance before this committee now, the case was terminated and the question was never determined by the court; but those reports contained detailed information, acquired long before any action was taken against Osborne, long before Mr. Marshall became interested in the case in any capacity, and the information contained in those reports was absolutely inconsistent with Mr. Marshall's views as expressed in the indictment against the Slades.

Mr. CARLIN. Safford was tried and convicted, was he not?

Mr. SLADE. Yes; he was. The case is now before the circuit court of appeals.

Mr. CARLIN. What was he convicted of—perjury?

Mr. SLADE. Yes; perjury.

Mr. GARD. When is it to be heard in the court of appeals?

Mr. SLADE. I trust it will be heard in the very near future. We have been very anxious to have the case reached, and the brief was filed three months and a half ago, and no reply brief has been filed by the Government.

Mr. CARLIN. Mr. Slade, that is all the committee wishes to ask you. You are excused.

(Witness excused.)

TESTIMONY OF JOHN B. STANCHFIELD.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. CARLIN. Mr. Stanchfield, give your name, address, and profession to the stenographer.

Mr. STANCHFIELD. John B. Stanchfield; lawyer; business address, 120 Broadway.

Mr. CARLIN. Mr. Stanchfield, are you acquainted with H. Snowden Marshall, the district attorney for the southern district of New York?

Mr. STANCHFIELD. Yes.

Mr. CARLIN. Do you know of any improper relation of Mr. Marshall, officially or otherwise, with any corporation or individual, with special reference to the American Tobacco Co., the United Cigar Stores Co., or the Metropolitan Tobacco Co., or any other company?

Mr. STANCHFIELD. I do not.

Mr. CARLIN. Have you any information of any neglect of Mr. Marshall in the official discharge of his duty, or duties, with reference to these particular corporations or other corporations?

Mr. STANCHFIELD. None whatever.

Mr. CARLIN. Mr. Stanchfield, were you the counsel for Rosenthal in the case of *The United States v. Rosenthal*?

Mr. STANCHFIELD. One of them.

Mr. CARLIN. What was the result of that case?

Mr. STANCHFIELD. He pleaded guilty to an indictment for undervaluation and was fined; the amount I do not recall.

Mr. CARLIN. Let me refresh your recollection. Was he fined \$10,000?

Mr. STANCHFIELD. I have no means of knowing the line of inquiry you were to pursue, and you will have to pardon me if my recollection is at fault. I recall that much, however—that he pleaded guilty and a fine was imposed.

Mr. CARLIN. The fine was \$10,000, was it not?

Mr. STANCHFIELD. No; I do not think it was, Mr. Chairman, as much as that. It would be speculation on my part. I could not answer that at the moment.

Mr. CARLIN. Can you recall the amount Rosenthal was supposed to owe the Government?

Mr. STANCHFIELD. I wish I might have known about this line of inquiry and I could have furnished all that information. There was a civil litigation brought to recover from Mr. Rosenthal a considerable amount of money, in which action professionally I was not interested, but it was compromised and he paid in compromise of that a very considerable sum of money, thousands of dollars. How much, I am unable to tell you at the moment.

Mr. CARLIN. A civil action brought by the Government?

Mr. STANCHFIELD. Yes; and that amount was taken into consideration by the court in fixing the fine at the time sentence was imposed. In addition to all of that, Mr. Rosenthal, when indicted had given bail. That amount I do not remember—\$25,000 or \$30,000—and became a fugitive from justice, and that bail had been forfeited and paid by his bondsmen. So that coupled with the bail, the amount in

the civil litigation, and the fine. he paid the Government three or four times as much as could have been recovered in the civil litigation.

Mr. CARLIN. Let us see if I can refresh your recollection. Was not the amount claimed by the Government something like \$4,000,000?

Mr. STANCHFIELD. I never was in that, Mr. Carlin; I can not tell you. Mr. Marshall was his attorney; Mr. Marshall, of Guggenheimer, Untermeyer & Marshall. I had nothing to do with that civil litigation.

Mr. CARLIN. Who represented the Government in the civil litigation, do you know?

Mr. STANCHFIELD. The Federal district attorney at the time; whether it was Mr. Wise or Mr. Simpson or Gen. Burnett I can not tell you. It was a good many years ago.

Mr. CARLIN. It was not Mr. Marshall?

Mr. STANCHFIELD. No.

Mr. CARLIN. Do you remember for what the indictment was found?

Mr. STANCHFIELD. Broadly speaking, undervaluation.

Mr. CARLIN. If the amount had been settled in the civil suit and the Government fully satisfied, what would have remained of the indictment?

Mr. STANCHFIELD. They always pursue both remedies. They indict and prosecute civilly as well, right along. That is the ordinary practice here. I am in those cases constantly where my clients are sued civilly and indicted as well.

Mr. CARLIN. But it has been represented to the committee, in a memorandum before us, that an effort was made to settle the criminal matter with the district attorney presiding, Mr. Marshall, by agreeing upon a small fine, and that effort failed. Is that correct?

Mr. STANCHFIELD. I know nothing about it. I was not a party to it.

Mr. CARLIN. Was it agreed with the district attorney, before Mr. Rosenthal returned, as to the amount he should pay in fine?

Mr. STANCHFIELD. It certainly was not. We had a very warm argument in court as to the amount of fine that would be imposed at the time when it was imposed.

Mr. CARLIN. No agreement as to the amount, before the plea of guilty was entered?

Mr. STANCHFIELD. None at all.

Mr. CARLIN. The committee, by memorandum before it, has been advised that you are familiar with certain practices of the district attorney's office that are reprehensible. If you know of any, will you give the committee the benefit of your information?

Mr. STANCHFIELD. Unfortunately your memorandum is erroneous. I am not familiar with any improper practices on the part of the Federal district attorney. On the contrary, I think Mr. Marshall is a very high-class public official.

Mr. NELSON. Did you say that Mr. Rosenthal had been represented by Mr. Marshall?

Mr. STANCHFIELD. Yes; Mr. Untermeyer's firm, Guggenheim, Untermeyer & Marshall, were his attorneys.

Mr. NELSON. Not the Marshall, the present district attorney?

Mr. STANCHFIELD. Oh, no; Louis Marshall.

Mr. NELSON. Were you in any way, officially or in a legal way, associated with Mr. Marshall in any litigation—I mean at present, H. Snowden Marshall, district attorney?

Mr. STANCHFIELD. You mean as his associate?

Mr. NELSON. Yes.

Mr. STANCHFIELD. No; but I represent a great many interests opposed to him. I have no interests with him.

Mr. NELSON. Have you been consulted by him with reference to this impeachment matter?

Mr. STANCHFIELD. Never.

Mr. NELSON. He has not asked you to represent him at all in the matter, if it should go beyond this inquiry?

Mr. STANCHFIELD. Never.

Mr. CARLIN. Mr. Stanchfield, I want to exhaust this particular subject, as it has been given to the committee. Was there any agreement with the district attorney's office, before or after Rosenthal appeared to answer the indictment, that he should respond in the way of a fine and should be immune from imprisonment?

Mr. STANCHFIELD. None at all. There was no agreement with Mr. Marshall as to what disposition should be made of Rosenthal at any time that I was ever cognizant of or a party to.

Mr. CARLIN. Who was the other counsel representing Rosenthal?

Mr. STANCHFIELD. Mr. Louis Marshall, a partner of Mr. Samuel Untermyer and a very distinguished member of the New York bar.

Mr. GARD. May I ask, did Mr. Louis Marshall represent Mr. Rosenthal in the criminal as well as the civil litigation?

Mr. STANCHFIELD. I was associated, perhaps, more correctly speaking, with him in the criminal prosecution.

Mr. GARD. He was originally counsel in the civil case?

Mr. STANCHFIELD. Let me explain this. Mr. Marshall was the attorney for Mr. Rosenthal in the civil litigation, which was many years before the time when Mr. Rosenthal pleaded guilty to the indictment.

Mr. GARD. Approximately how many years?

Mr. STANCHFIELD. Oh, 6, 9, or 10, and Mr. Rosenthal, as I stated, became a fugitive from justice, and his bail was forfeited and collected, and he remained abroad many years and then returned and pleaded guilty to the indictment, and this fine was imposed.

Mr. NELSON. Many years—you mean by that 6, 8, or 10?

Mr. STANCHFIELD. Yes; I would have to look that up to tell you with any accuracy. I do not carry these cases in my head. When I am through with a case I forget it and take up another one.

Mr. GARD. Was there any effort on the part of any district attorney to have Mr. Rosenthal returned by extradition process?

Mr. STANCHFIELD. That is not an extraditable offense. That is one of the few crimes a man may commit in this country and remain abroad with impunity.

Mr. GARD. Who was the judge sentencing Mr. Rosenthal in the criminal branch finally?

Mr. STANCHFIELD. Judge Martin, of Vermont, was presiding at the time. He is now dead. He was holding the criminal term at that time, and that, of course, is where we went with Mr. Rosenthal on his return to this country.

Mr. GARD. Are you able to give the committee any information that the present district attorney's office for the southern district of New York, causes persons to be summoned under the guise of witnesses and then extracts knowledge or information from them in the private rooms of the district attorney or his assistants?

Mr. STANCHFIELD. In answer to that question, I think the practice is substantially the same, both in the State district attorney's office and in the Federal district attorney's office, and that is this: The grand jury here is a perennial institution. There is always a grand jury in session, and when one speaks of it not being the custom up the State or in other localities to take witnesses before grand juries, it is only because of the fact that they only have a grand jury in session two, three, or four times in the year. Here there is one in session all the time, and the grand jury, through the district attorney, sends out a subpoena for witnesses all the time in the investigation of crime, and if a man is under indictment and the district attorney hears of a witness, why, he brings him before the grand jury and they examine him with reference to developing further evidence or corroborate it or strengthen it when they can. I do not like the practice. I am on the other side, but it is nothing new in New York.

Mr. GARD. The object of my inquiry is to know whether, instead of having them brought before the grand jury, they are subpoenaed before the grand jury and then taken into the rooms of the district attorney or his assistants instead of being taken before the grand jury.

Mr. STANCHFIELD. I could not give you any information on that subject. I have heard such gossip. Whether it is true or not, I am not advised.

Mr. GARD. You say you have heard?

Mr. STANCHFIELD. I have heard that kind of gossip. It never has proceeded to any extent to disturb my professional serenity. If it did, I would have made trouble about it if I knew how, and I think I would know how.

Mr. GARD. You have not any personal knowledge of anything of that kind?

Mr. STANCHFIELD. I have not at this moment; no, sir.

Mr. CARLIN. Mr. Stanchfield, with reference to the Rosenthal matter again; you have no knowledge, as I understand you, of any agreement having been made in advance by the district attorney's office for the return of Rosenthal to this country, of an assurance that a fine would be administered instead of a jail sentence?

Mr. STANCHFIELD. I know there was no such agreement. There could have been none such made, unless the judge was a party to it, and I do not think any one of my clients would have had the temerity to approach Judge Martin with a suggestion of that kind. At least, I would not.

Mr. NELSON. On that line did the district attorney recommend a fine?

Mr. STANCHFIELD. He certainly did not.

Mr. NELSON. He resisted?

Mr. STANCHFIELD. Yes.

Mr. NELSON. Did he ask for punishment other than fine?

Mr. STANCHFIELD. I would have to get the record. I do not want to express an opinion as to that. I do not recall at the moment what

... we had a warm argument. We did have; whether it be the amount of the fine that should be imposed, or whether it should be coupled imprisonment with fine, I do not at this moment recollect.

MR. CARLIN. I just want to ask you with reference to practice before grand juries.

MR. STANCHFIELD. I am very glad to answer any inquiry of which I have any knowledge. I am very much disinclined to express an opinion predicated upon gossip as to the basis for which I have no information and no knowledge.

MR. CARLIN. Yes; we would not care for your opinion based on gossip. We are asking with reference to your experience. It has been testified to before the committee that it is a common practice that where a trial is to be had of a criminal case, the witnesses for the defendant are summoned before the grand jury the day before, and there in the presence of the district attorney or his assistants, one of his assistants, his knowledge of the case is extracted in the guise of a further investigation for additional indictments. Do you know anything of such a practice?

MR. STANCHFIELD. I can only say in answer to that, Mr. Carlin, that I have no information of that character—have had no such experience.

MR. GARD. Has anything been brought to your professional attention that subpoenas, accompanied by so-called appearance tickets, commanding persons named therein to appear in the district attorney's office for the purpose of extracting information to be used against them or against other persons—has it come to your observation personally or professionally? Has that been made known to the members of the New York Bar or the New York Bar Association of any such practice as that, that it is countenanced or approved by this district attorney in the southern district of New York?

MR. STANCHFIELD. I think that custom obtains, both in the State district attorney's office and possibly in the Federal. I am more sure of my information as to the State's attorney than I am of the United States attorney. In other words, they send a letter or some sort of ticket to a man and ask him to call at the district attorney's office, and a man is there interviewed by some assistant in the district attorney's office with reference to some evidence, and he may or may not be taken before a grand jury and interrogated. If the man who receives such a communication refuses to go to the district attorney's office, then they subpoena him before the grand jury and examine him.

MR. GARD. I am not familiar with this ticket process.

MR. STANCHFIELD. There is no basis for it. It is simply a custom. No one has to pay any attention to it unless they please. It is purely optional with the man who receives the ticket whether he goes or not.

MR. GARD. No compulsory process would follow his refusal to come?

MR. STANCHFIELD. Absolutely none.

MR. CARLIN. Is not the impression created on the minds of average persons that this is a summons, and that they are obeying the summons of the court?

MR. STANCHFIELD. Yes; I think very likely it is. If you can rectify that practice, I am in very thorough harmony with you. We won't have any difference on that subject, because my professional activities and interests run along the other line.

Mr. CARLIN. With reference to this plea of guilty of Mr. Rosenthal, in ordinary practice of the law and the defense of criminals, if a plea of guilty is to be entered, is it not usually the duty of an attorney to ascertain beforehand from the prosecuting officer, if it be possible to do so, just what might be expected for his client?

Mr. STANCHFIELD. Yes; it is his duty, and a duty that I think anyone who represents people unfortunate enough to be enmeshed in the toils of the criminal law seeks to carry out, but a difficult proposition to get the assurance.

Mr. CARLIN. In the case of Rosenthal?

Mr. STANCHFIELD. There was no such assurance. Mr. Rosenthal came into this country and presented himself at the bar of justice and took his chances.

Mr. CARLIN. Was there any effort made to secure such assurance?

Mr. STANCHFIELD. Not that I know of.

Mr. CARLIN. He just took a chance and pleaded guilty?

Mr. STANCHFIELD. Yes; I would again repeat the advice I gave Mr. Rosenthal. He had been exiled from this country for 10 or 12 years, a fugitive from justice. He had large property interests here. He was the president of one of the largest corporations in New York engaged in the importation of silk. These offenses were 12 years old. He had paid the Government many times what it could have recovered.

Mr. CARLIN. Is that a fact?

Mr. STANCHFIELD. That is what I was informed at the time.

Mr. CARLIN. The impression that the committee has gotten—I don't know just where, but from somebody's testimony—is that he paid the Government less than 10 per cent of what he should have paid.

Mr. STANCHFIELD. He paid the Government around a hundred thousand dollars, including the amount of his forfeited bail, and I have been told by Mr. Marshall that it was more than the Government ever could have recovered. I never heard of any \$4,000,000. Your figures are to me wildly excessive. I never heard of any such figure.

Mr. NELSON. Mr. Stanchfield, you are doubtless familiar with the practice along this line. Do you know of the case of the United States against Julius Straus, importer of laces, etc.?

Mr. STANCHFIELD. No; I was not interested in that case.

Mr. NELSON. Have you any information at all on that case to give the committee?

Mr. STANCHFIELD. No; I do not read cases in the newspapers unless I am in them. I know nothing of the Straus case.

Mr. NELSON. I am just asking as to the practice in that case. Do you know whether that was settled by payment of a fine or not?

Mr. STANCHFIELD. I do not. An overwhelming percentage of people plead guilty to undervaluation; the punishment is a fine which is small.

Mr. NELSON. I am just getting at the practice.

Mr. STANCHFIELD. It is a great exception that there ever is a jail sentence imposed, and if it is it is a matter of a day, so that they don't have to go actually to jail. They stay in the custody of the marshal, sometimes 10 days, sometimes 20 or 30. I have been in a great many large cases of undervaluation, and I know something about that fact.

Mr. CARLIN. Do you think that is an effective method of preventing the evil, Judge?

Mr. STANCHFIELD. I do not know. I do not think that locking them up would stop it, either. Perhaps I ought not to say that for publication, but I think that women as a rule, from my experience with them, are natural-born smugglers. I represented a good many of them.

Mr. CARLIN. Judge, do you think that applies to the young lady more than it does to the old one?

Mr. STANCHFIELD. I think it applies to the old and the young, the married and the unmarried, and that the man generally assumes the responsibility, and perhaps he ought to.

Mr. NELSON. Have you any knowledge of the Duveen case?

Mr. STANCHFIELD. Yes; a good deal.

Mr. NELSON. Were you attorney in that case?

Mr. STANCHFIELD. Yes.

Mr. NELSON. What was the indictment there?

Mr. STANCHFIELD. Undervaluation.

Mr. NELSON. What was the charge, undervaluation and a civil suit started also?

Mr. STANCHFIELD. Yes.

Mr. NELSON. How much money was there charged that the Government had lost?

Mr. STANCHFIELD. Well, that is a long story. I paid \$1,250,000 to settle it.

Mr. NELSON. Twelve hundred and fifty thousand?

Mr. STANCHFIELD. Yes, sir; a million and a quarter.

Mr. CARLIN. Was the Government overpaid in that case, Judge?

Mr. STANCHFIELD. I thought they were; think so yet.

Mr. NELSON. Mr. Stanchfield, this case is simply given to me as illustrative of the practice here. I would like to have you give me the outlines as to that case of the facts, not asking for anything privileged, if you were attorney in the matter?

Mr. STANCHFIELD. I should not reveal anything privileged.

Mr. NELSON. Of course not; that is assumed.

Mr. STANCHFIELD. The accusation against the Duveens was that they had been under-valuing pictures and works of art that had been brought to this country, running back over a considerable period of years, and they were prosecuted, both civilly and criminally, as I have stated was the custom, and we had the question of an adjustment of the matter up for six or eight months, when Mr. Wise was the district attorney, and finally came to an agreement and paid the Government in full settlement of all undervaluations, protecting both the Duveens and their customers, \$1,250,000. Upon the indictments they pleaded guilty, and were fined in addition.

Mr. NELSON. That was a settlement had with Mr. Marshall, the present district attorney?

Mr. STANCHFIELD. No; Mr. Wise.

Mr. CARLIN. Was not that settled with the Treasury Department in Washington?

Mr. STANCHFIELD. It had to go there for approval; but, of course, in my dealings I dealt directly with the United States district attorney.

Mr. CARLIN. Was there a jail sentence imposed in that case?

Mr. STANCHFIELD. No, sir.

Mr. CARLIN. What was the fine in that case, Judge?

Mr. STANCHFIELD. Ten or fifteen thousand dollars, I don't recall which.

Mr. CARLIN. If a man steals ten or fifteen dollars from the Government in New York, he goes to jail, and if he steals a million and a half, he doesn't. Is that the practice here?

Mr. STANCHFIELD. I never heard of any such practice. I do not believe it exists. That would be rather a commentary on the Democratic administration, and I am too loyal a supporter of it to admit the existence of any such practice.

Mr. CARLIN. The facts are he did pay \$1,250,000?

Mr. STANCHFIELD. I paid that, Mr. Carlin, to satisfy a civil claim.

Mr. CARLIN. That civil claim, if it was a good claim——

Mr. STANCHFIELD. For the law requires——

Mr. CARLIN. The civil claim involved the criminal act of under-assessment—undervaluation?

Mr. STANCHFIELD. No; not in the way you put that inquiry. A man may incur a civil obligation and it may or may not be criminal, according to whether the statutes make it criminal.

Mr. CARLIN. The statute in this case did make it criminal?

Mr. STANCHFIELD. Yes; it is a criminal offense to undervalue, and there is a criminal recovery as well. They are coordinated remedies.

Mr. CARLIN. I understand one gives the Government the right to collect its revenue, and the other is a punishment for having committed the crime?

Mr. STANCHFIELD. Yes.

Mr. CARLIN. But in this case you settled for \$1,250,000?

Mr. STANCHFIELD. Yes.

Mr. CARLIN. Do you remember what the Government's claim was in that case?

Mr. STANCHFIELD. The way the Government arrives, when you speak of a claim, they take the business of a given defendant, running over a number of years, and if in any one month it develops that he has undervalued to a certain extent, they take the undervaluation for that month as a standard and multiply that by the period of time over which the undervaluations have gone, upon the assumption if a man undervalues one month, he did undervalue all of the months, and that is the way they get at a gross claim.

Mr. CARLIN. That is subject to rebuttal.

Mr. STANCHFIELD. When it comes to negotiations for settlement, that the lawyers deny, with the result that we split somewhere between the two extremes.

Mr. CARLIN. I was just trying to get at your recollection as to the amount which the Government claimed was due in that case.

Mr. STANCHFIELD. I can not recall. I think that the maximum that Mr. Wise ever insisted upon was about in the neighborhood of two millions.

Mr. NELSON. I suppose, as a matter of fact, speaking of the practice the criminal indictments are hung over them as a club to get a good settlement on the civil?

Mr. STANCHFIELD. The district attorney would deny that statement, but I am inclined to think that is substantially true, and the answer to it is when they use the club and I am clubbed into admission and

pay civilly, and then I turn around and say to the presiding judge, "I was clubbed into this settlement and having paid more than I ought to have paid, therefore, you ought to let me off with a fine," with the result you usually get off with a fine.

Mr. CARLIN. Did you ever know Mr. Marshall to make a recommendation to the court concerning any such a case of undervaluation?

Mr. STANCHFIELD. Doing what?

Mr. CARLIN. Know Mr. Marshall to make any recommendation to the court concerning any such case of undervaluation—Mr. H. Snowden Marshall?

Mr. STANCHFIELD. I do not at the moment recall. You mean where he has recommended imprisonment and fine?

Mr. CARLIN. Where he has recommended that there be no imprisonment, simply a fine.

Mr. STANCHFIELD. I never knew him. I think Mr. Marshall generally takes the position that he states the facts and leaves them to the court to determine what the penalty shall be. I do not know that I have ever heard Mr. Marshall express any opinion as to what the punishment ought to be. I have heard him make a statement of fact and leave it to the court to determine what the punishment shall be.

Mr. CARLIN. Does he usually appear in that class of cases himself?

Mr. STANCHFIELD. I generally speak of instances when I happened to be in court when I have heard this. I think his assistants generally represent him in these matters, but I supposed your question was personal as to Mr. Marshall himself.

Mr. CARLIN. Yes.

Mr. GARD. Have you knowledge of any matters affecting legal ethics on the part of either Mr. Wood or Mr. Hershenstein, the assistant district attorneys—any personal knowledge of anything of that kind?

Mr. STANCHFIELD. I have not. I know Mr. Hershenstein quite well. I have only a very casual acquaintance with Mr. Wood.

Mr. CARLIN. What is Mr. Marshall's professional standing at the New York bar?

Mr. STANCHFIELD. He was, before he became district attorney, a law partner of Senator O'Gorman, a member of the firm of O'Gorman, Battle & Marshall, and before that he had been a member of the firm of Weeks, Battle & Marshall, Bartow S. Weeks being the senior member of that firm, and Mr. Weeks is now a justice of the supreme court of the State, and Mr. Marshall's reputation for 15 years at the New York bar has been of the very highest character.

Mr. CARLIN. He enjoys the same reputation now?

Mr. STANCHFIELD. Absolutely so, so far as I have ever heard.

Mr. CARLIN. We are very much obliged to you, sir, and will excuse you.

Mr. STANCHFIELD. I beg your pardon for not having been here in response to your subpoena, but I had to be away.

Mr. CARLIN. We understood that, Judge.

Mr. STANCHFIELD. Thank you for your courtesy.

Mr. CARLIN. The committee will adjourn until to-morrow morning at 10.30 o'clock.

(Whereupon at 4 o'clock p. m., a recess was taken until Wednesday, March 1, 1916, at 10.30 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
New York City, March 1, 1916.

The subcommittee met at 10.30 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson; Hon. Frank Buchanan and Mr. Walter J. Walsh as counsel.

Mr. CARLIN. The committee will come to order. Mr. Clerk, hand me the list of witnesses, please. Mr. Clerk, call the first witness—call all of the witnesses, and if they are here let them answer and they can be retired from the room.

(Thereupon, Mr. Russell, the clerk, called the following names: Pierre M. Clare, Moses W. Saxe, Mr. Rowley, Aaron Feldman, Dorothy Handelsmann.)

Mr. CARLIN. The sergeant at arms will call the first witness.

TESTIMONY OF PIERRE M. CLARE.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Walsh, do you have any questions you desire to ask this witness?

Mr. WALSH. Yes. What is your occupation, Mr. Clare?

Mr. CLARE. Real estate and insurance broker.

Mr. WALSH. Were you called to serve on the grand jury—serve on the petit jury in the United States court during the month of November last?

Mr. CLARE. I was; yes.

Mr. WALSH. Did you serve?

Mr. CLARE. I did not. When the roll of jurors was called my name was not among them. I went up to the clerk with my notice, and he told me that somebody had been down and excused me from jury duty.

Mr. WALSH. Had you authorized anyone to excuse you?

Mr. CLARE. I had not.

Mr. WALSH. Did you serve as such juror during the month of September?

Mr. CLARE. I did; yes.

Mr. WALSH. State whether or not you were such juror in an action of the United States against one Simon Kugel.

Mr. CLARE. I was.

Mr. WALSH. That case was tried before what judge?

Mr. CLARE. Judge Grubb.

Mr. WALSH. Do you remember the names of the counsel for the Government in that case?

Mr. CLARE. Mr. Wood and Mr. Hershenstein.

Mr. WALSH. Now, on that trial, Mr. Clare, was there anything that took place in regard to Mr. Wood's conduct, between Mr. Wood and one of the jurors serving on the panel?

Mr. CLARE. There was.

Mr. WALSH. Just tell the committee what it was?

Mr. CLARE. During the summing up Mr. Wood read from a book that he claimed was the record of the testimony—regarding the

testimony of one of the witnesses. I don't remember which witness it was, but at the time I knew the testimony he was reading was not the testimony given at the trial. Personally I did not pay any attention to his misstatement, because my mind was made up, but one jurymen by the name of Davis challenged him and told him that that was not the testimony given at the trial.

Mr. Wood said "I am reading from the record." He said "I don't care what you are reading from, Mr. Wood, that is not the testimony. The testimony of the man is fresh in my mind." He says "You are reading questions and answers that the man has given, but you are leaving out questions in between, which change the whole meaning of the man's testimony, and as you are reading it it is not the testimony that the man has given." That same thing also occurred during the examination of a witness by the name of Oppenheimer. Mr. Wood was reading what he claimed to be was the grand-jury minutes, and he asked Mr. Oppenheimer whether he made certain replies in answer to certain questions, and Mr. Oppenheimer compelled him to admit that he was skipping questions in the testimony before the grand jury to change the meaning. That also occurred during the cross examination of Mr. Kugel, and Kugel had to continually correct him, telling him that the questions and answers referred to matters different than he was cross-examining him on.

Mr. WALSH. Did a witness named Cohen, from Boston, testify in that action?

Mr. CLARE. Yes, sir.

Mr. WALSH. Did he testify concerning some memorandum that he had made of statements to him of a person interested in the case?

Mr. CLARE. He testified that he had been called to Mr. Hershenstein's office and been subpoenaed to produce all documents in connection with Rogal & Brass, as I recollect it, and that he brought some papers and letters to Mr. Hershenstein's office. Mr. Hershenstein read them over and said, "These are not important," and tore them up and threw them in the waste-paper basket.

Mr. WALSH. Now, Mr. Clare, as a jurymen and one endeavoring to ascertain the facts, I wish you would tell the committee whether or not the destruction of these papers that were torn up before the jury would in any way aid the jury in determining the action?

Mr. CLARE. Mr. Cohen's testimony, which stood uncontradicted, I should say that they would, and that was the opinion of most of the jurymen.

Mr. WALSH. That the papers were of some importance?

Mr. CLARE. Great importance.

Mr. WALSH. Now, on that trial, Mr. Clare, was there any claim made by anyone or any conduct indicating a code of signaling between witness and counsel for the Government?

Mr. CLARE. Yes; during the testimony of Rogal and Brass and Mrs. Rogal, rather during the cross-examination—personally, I did not see these signals. I do know that whenever a knotty question was put to either of those three witnesses, that they would look over toward Mr. Hershenstein. Some of the other jurors said that they were signalling between them. Personally, I did not see it, but I know objection was made by Mr. Moss, if I recollect rightly, to this code of signals that were passing between them; but I know that

they always hesitated and looked over there, and some of the other jurymen claimed they were signalling.

Mr. WALSH. Were there any statements made to the court, or any discussion in open court concerning the question of signalling?

Mr. CLARE. Yes, there was. There was an objection made, I believe, by Mr. Slade, if I recollect rightly. It is over a year ago now. I do not recollect positively.

Mr. WALSH. Do you know a man named Mr. Browne, that owns the building at 170 Broadway here in New York?

Mr. CLARE. Stewart Browne, yes.

Mr. WALSH. Did you have a conversation with Mr. Browne, concerning the Kugel case?

Mr. CLARE. Yes; I have known Mr. Browne for a number of years. He is the president of an association that I have been connected with, and I had occasion to step in to see him on association matters, either the day following, which was Saturday, or on Monday—I am not sure which. It was either one of those days, and after getting through the business that I went to see Mr. Browne about, I told him that I had been of material assistance in keeping one of his tenants. He asked me who that was. I said it was Mr. Kugel. He wanted to know in what way. I told him I had been on his jury and the jury disagreed, stood 9 to 3 for acquittal. Well, he said, "There is a peculiar thing about that case." He said, "Of course, in a building of this size, I can not know all about my tenants." He said, "When Mr. Kugel was indicted—" he says, "I have known Mr. Marshall for a number of years; I went up to see him, to find out about the case, and he told me that he personally did not know anything about it, but that he would look it up and let me know." He said later Mr. Marshall reported to him that it was an error to have indicted Mr. Kugel, and as there was not sufficient evidence to convict him, that he would not be brought to trial.

Mr. WALSH. I think that is all.

Mr. CARLIN. Is that all you want to ask the witness?

Mr. WALSH. That is all.

Mr. GARD. Is that Mr. Browne you refer to, the Stewart Browne that testified yesterday?

Mr. CLARE. I do not know whether he testified yesterday or not.

Mr. GARD. Well, he was here and testified.

Mr. CLARE. Stewart Browne, 170 Broadway.

Mr. GARD. The owner of the building in which Mr. Kugel has his office?

Mr. CLARE. Yes.

Mr. GARD. Yes; he appeared and testified yesterday.

Mr. CARLIN. Do you know him very well?

Mr. CLARE. Very well.

Mr. CARLIN. He testified yesterday that he did not know you, he said, unless he could see you. He said he would not be certain whether he knew you or not.

Mr. CLARE. That would not surprise me. He knows me intimately.

Mr. GARD. His testimony yesterday was to the effect that he had talked with some one, presumably you, but that Mr. Marshall had said nothing to him about the case; that he had represented that he knew Mr. Kugel; but that Mr. Marshall had made no comment on it.

Mr. CLARE. Mr. Browne's conversation with me is just as I have given it here.

Mr. NELSON. Was there anybody present when this conversation took place?

Mr. CLARE. No; just Mr. Browne and myself.

Mr. NELSON. Where were you?

Mr. CLARE. In Mr. Browne's office. He is president of the United States Real Estate Owners' Association. At that time I was president of the Murray Hill Taxpayers' Association, am still an officer of that association, and affiliated with the united body.

Mr. NELSON. What is your business?

Mr. CLARE. Real estate.

Mr. CARLIN. We are very much obliged to you.

TESTIMONY OF MOSES W. SAXE.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. CARLIN. Mr. Walsh, any questions you desire to ask this witness?

Mr. WALSH. Yes. Mr. Saxe, what is your occupation?

Mr. SAXE. I am an attorney and counselor at law.

Mr. WALSH. Were you associated with Mr. Simon Kugel in the practice of law here in New York?

Mr. SAXE. I was and still am.

Mr. WALSH. Were you associated with him at the time of his indictment?

Mr. SAXE. I was.

Mr. WALSH. Did you appear as counsel for him on the trial of that action?

Mr. SAXE. I did not.

Mr. WALSH. Did you act as his counsel at any time after his indictment?

Mr. SAXE. All of the time since he was indicted. We consulted frequently about his case—consulted with the other attorneys of record, both Mr. Kugel, I, and the attorneys preparing for the trial.

Mr. WALSH. Who was Mr. Kugel's chief attorney?

Mr. SAXE. Mr. Frank Moss.

Mr. WALSH. Now, at any time, Mr. Saxe, were you subpoenaed to appear before the grand jury?

Mr. SAXE. Several occasions—two or three occasions.

Mr. WALSH. Were you brought before the grand jury upon each occasion you were subpoenaed?

Mr. SAXE. The first occasion I was not.

Mr. WALSH. Where were you brought upon that first occasion?

Mr. SAXE. As I recollect it, there was a direction on the back of the subpoena to call at a certain number of a room, and when I got there it was the assistant district attorney's room, Mr. Hershenstein.

Mr. WALSH. Did Mr. Hershenstein ask you questions?

Mr. SAXE. Yes; he asked me a lot of questions that morning, and I did not appear before the grand jury that day.

Mr. WALSH. Can you tell us briefly what the general nature of the line of the questioning was that he adopted?

Mr. SAXE. It was all about the case, one phase or another; asked me about conversations that I had with Mr. Kugel or some of the complaining witnesses, who were Mr. Kugel's clients; asked me about, generally, all about the case from every angle. I told him, and he told me I could go.

Mr. WALSH. When were you next summoned?

Mr. SAXE. Several weeks after that.

Mr. WALSH. Were you brought before the grand jury upon that occasion?

Mr. SAXE. I was directed to call at the same room at that time. As I recall it, the subpoena had a notice on the back of it to call at a certain room. I refused to talk to Mr. Hershenstein then. I said I was subpoenaed before the grand jury, and I would not say anything to him unless he wanted to take me before the grand jury, and he did take me before the grand jury then.

Mr. WALSH. Were you subpoenaed, Mr. Saxe, at any time just previous to the trial of the action?

Mr. SAXE. Yes; that was the last time, while the case was on the day calendar, being adjourned from day to day. Two or three days before the case actually started in the trial in court I was subpoenaed before the grand jury.

Mr. WALSH. Do you recollect whether you were subpoenaed before the grand jury the night before the case actually went to trial?

Mr. SAXE. I would not say that it was the day before. It was within two or three days. The case was actually on the calendar. It was being marked off from day to day, because, I think, on account of some previous case that was in the course of trial; and it was while that case was on the calendar and having been reached for trial that I was before the grand jury. It was not more than three days before the case actually started—may have been one day, but I would not say that.

Mr. WALSH. Upon that occasion were you interrogated in reference to the Kugel case?

Mr. SAXE. Every angle of the Kugel case, from the beginning to the end of it, for nearly an hour and a half or two hours.

Mr. WALSH. Who questioned you?

Mr. SAXE. I think it was Roger Wood was the questioner, assisted by Mr. Hershenstein. Mr. Hershenstein suggested questions and Mr. Wood propounded the questions to me.

Mr. WALSH. Did Mr. Wood know at that time that you were acting as counsel for Kugel?

Mr. SAXE. I told him at the outset I was, and I claimed privilege to a number of questions that he asked me, on the ground, and he wanted to know whether I had a retainer. I told him I did have a retainer—I did not take any money from Mr. Kugel. We were lifelong friends, we were brought up together, associated together; I considered myself his attorney, although I did not have a written retainer. There were a number of questions upon that point, insisting that I should answer certain questions, but I refused to answer some questions, on the ground that they were privileged communications between attorney and client, and those questions were principally questions of matters that were discussed between Mr. Frank Moss, myself, and Mr. Kugel within a short time before the day of the examination.

Mr. WALSH. They inquired of you concerning your discussion, as counsel in the case?

Mr. SAXE. Yes, sir.

Mr. WALSH. I think that is all of this witness.

Mr. SAXE. I remember distinctly one particular thing; there was a paper in question; he wanted me to tell the contents of that paper and an affidavit, and I told him Mr. Moss had it; that the last I saw of it it was handed to Mr. Moss, and I would not tell him anything about it, because that was discussed very thoroughly between the lawyers in the preparation of the case.

Mr. GARD. How many times were you called before the grand jury to testify?

Mr. SAXE. I appeared before the grand jury twice, and called before them—I was subpoenaed three times but actually appeared twice.

Mr. WALSH. Twice?

Mr. SAXE. Yes.

Mr. GARD. Each time were you interrogated about the Kugel case?

Mr. SAXE. Nothing else but the Kugel case.

Mr. GARD. Did you appear also as a witness for the defendant when the case was tried?

Mr. SAXE. Yes; both trials.

Mr. GARD. You were a witness for the defendant?

Mr. SAXE. I was.

Mr. GARD. Did you tell them when you were being asked questions in the grand-jury room by the district attorney's assistants—did you tell them that you were a witness for the defendants; that you had such knowledge that you might be a witness for the defendant?

Mr. SAXE. I should think they ought to have known that.

Mr. GARD. Did you tell them that?

Mr. SAXE. I don't recall whether I told them that, in so many words, but any man with any sense would know it. They asked me about conversations between the bankrupts and the complaining witnesses, and Mr. Kugel; what conversations I was present at; what telephone calls I had, and every angle of the Kugel case. They asked me about checks in the Kugel case; asked me about the books.

Mr. GARD. You were not indicted, were you?

Mr. SAXE. No; I was not indicted.

Mr. NELSON. Were you Mr. Kugel's associate in business—in law—at that time?

Mr. SAXE. Yes; I was for 10 years.

Mr. NELSON. You would be as cognizant of any misdoings as Mr. Kugel then? If there was anything wrong about the practice of your associates, you would be a party to it, would you not?

Mr. SAXE. I was just as much a part of it as Mr. Kugel was. I told them the very first day that it was a partnership case; that the money received went to Mr. Kugel as well as to me; that I was their attorney as well as he. In fact, I was the first one that talked about the case and so told them. I was the one that made the arrangements for Mr. Rogel and Mr. Kugel to meet. They consulted me first about it. Practicing in Brooklyn, I suggested Mr. Kugel should handle the case. We met the first time and were retained together.

Mr. NELSON. Was your testimony before the grand jury rehearsed in any way, in the trial of the case?

Mr. SAXE. It was.

Mr. NELSON. Tell me to what extent.

Mr. SAXE. There was questions asked, whether I had so testified before the grand jury, at the trial of the case. At the first trial I believe the questions were excluded, and then at the next trial asked the same questions, whether I had so testified before the grand jury, and whether I had made certain answers, and I answered to those questions after objection and overruling by the court.

Mr. CARLIN. Any further questions?

Mr. WALSH. Yes. I would like to ask a question or two further. Mr. Saxe, did your firm, the firm of Kugel & Saxe or Saxe & Kugel, or whatever it is, have any bankruptcy proceedings prior to Kugel's indictment?

Mr. SAXE. I personally never did. I was not admitted to the United States and I could not handle the litigation end of it. Mr. Kugel had some, but not very much. Occasionally he had a case in the course of his business, but it was not our specialty. We did not make a special practice of it.

Mr. WALSH. Was it a fact or was it not a fact that Mr. Kugel's office included any extensive line of bankruptcy work?

Mr. SAXE. I would not say so. I think we did less of that than any other line. We had a general practice.

Mr. GARD. What was the general character of your business?

Mr. SAXE. My end of the business was purely real estate and loans. I took care of that exclusively. The other branch was business litigation, commercial practice, trial work, all sorts of law work—general practice in the widest sense.

Mr. GARD. Did Mr. Kugel attend to that?

Mr. SAXE. Mr. Kugel attended almost entirely to litigation and court work and I attended to office work and real estate and loans.

Mr. GARD. Did you have anyone else in your firm?

Mr. SAXE. That is all, except clerks and stenographers.

Mr. WALSH. Were those clerks and stenographers likewise subpoenaed before the grand jury?

Mr. SAXE. The secretary in the Brooklyn office was subpoenaed at one time, and I know that almost the entire staff—everybody connected with the office in New York was subpoenaed. That I know from hearsay. I was not there when they were, but I know—it was told to me that everybody connected with the office was subpoenaed, clerks and office girls, and telephone operators and all of them.

Mr. WALSH. At the time that you were subpoenaed, when the case was set on the calendar for trial, were there any proceedings then pending before the grand jury in relation to Mr. Kugel or any other person?

Mr. SAXE. Not that I could see. There were no indictments found. There was not a thing in the trial came out—anything new that we hadn't already known from the indictments. Purely and simply an attempt to find out what I might testify in favor of Kugel; what information they could get from me or other witnesses, and I think I so told him (Mr. Wood) at the time when he first commenced to question me.

Mr. WALSH. On that trial of the United States against Kugel, were there any judges called to testify concerning Mr. Kugel's reputation and standing at the bar?

Mr. SAXE. Quite a number of them. If we had leeway, we could have had more.

Mr. WALSH. Tell us who were called.

Mr. SAXE. We had Judge Thomas, a United States judge from Connecticut; Judge Cohalan, then a municipal court judge, now a supreme court judge. There was Judge Hyland, a county court judge of Brooklyn. There was Judge Rosenthal, a municipal court judge. There was the then Secretary of State Mitchell May, secretary of the state of New York at that time. There was the postmaster of New Haven, Kugel's home town; Throop and, I think Mr. Kugel's pastor was subpoenaed, and then ex-Mayor Klein, of New York City, testified to the character of the witness.

Mr. WALSH. That is all.

Mr. NELSON. How long have you and he been engaged in the practice of law here in New York?

Mr. SAXE. About 12 or 13 years.

Mr. NELSON. You have two offices, have you?

Mr. SAXE. Yes; we have one in Brooklyn and one in New York.

Mr. WALSH. Did one of the district attorneys of Brooklyn testify for Mr. Kugel?

Mr. SAXE. Yes.

Mr. WALSH. What was his name?

Mr. SAXE. I think it was Louis Bick.

Mr. WALSH. He was the United States district attorney, was he?

Mr. SAXE. He was an assistant at the time, but he has since acted as district attorney for the Brooklyn district.

Mr. WALSH. That is all.

Mr. NELSON. Do you know any facts that would cause Mr. Hershenstein to have any malice against Kugel?

Mr. SAXE. I do not think Mr. Hershenstein ever knew Mr. Kugel. I think it was a case of overzealousness; that is what I think. I don't know that Mr. Hershenstein knew Mr. Kugel; I don't believe Mr. Kugel ever knew him before.

Mr. NELSON. In other words, overzeal in carrying—

Mr. SAXE. I think it was a young man saw blood before him and wanted to make good; that is all. I think that second trial was the worst outrage that ever occurred. After one of the defendants was acquitted and the jury stood 10 to 2 for 14 hours in favor of the other defendant, that the case should be brought on for trial again, after it cost Mr. Kugel thousands and thousands of dollars, almost ruined his practice, took away a year of his life—in those circumstances that case brought to trial again was an outrage. Everybody I met said so.

Mr. NELSON. Was this case ever brought to Mr. Marshall's attention by you?

Mr. SAXE. I don't know Mr. Marshall. I only met him in the hallway and at the time of summing up the case.

Mr. NELSON. He was there, then?

Mr. SAXE. The summing up of the first case or second case and when the judge charged the jury both times.

Mr. GARD. How long has this Hershenstein been a lawyer in New York?

Mr. SAXE. I really do not know. He looks to be a young man. I don't believe he is more than 25 or 26.

Mr. WALSH. Did Mr. Marshall come in and out of the court room while the case was being tried?

Mr. SAXE. I think I did see him once or twice. I don't know which trial it was. The case took fully two weeks to try, and I think I saw him twice during the entire proceeding.

Mr. WALSH. Do you know of Mr. Moss's calling attention of Mr. Marshall to some of the things that were happening in connection with the case?

Mr. SAXE. I do. At the time when I was subpoenaed Mr. Moss said it was an outrage; he never heard of such a practice in his life. He was the district attorney of the county in our district, in the State court, and that he never heard of any such proceedings and he would write a letter. He can not understand that the district attorney should do such a thing, and he wrote a long letter to Mr. Marshall, protesting against my appearing as a witness before the grand jury. That was just before the trial.

Mr. NELSON. Did he receive a reply?

Mr. SAXE. I do not think he did.

Mr. NELSON. You have no knowledge of that? You did not see the reply?

Mr. SAXE. I did not see a reply. I know it did not do any good—didn't have any effect.

Mr. NELSON. He stated to you verbally the substance of the reply, if he received any?

Mr. SAXE. My impression is that he did not get any reply at all, or that he did get a reply, simply referring the letter to Mr. Wood—one of those two things, I am not sure.

Mr. CARLIN. Any other question to ask this witness? You are excused, Mr. Saxe.

(Witness excused.)

Mr. CARLIN. Call the next witness.

TESTIMONY OF ROBERT ROWLEY.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. CARLIN. Mr. Walsh, have you any questions you want to ask this witness?

Mr. WALSH. Mr. Rowley, what is your occupation?

Mr. ROWLEY. Superintendent of 170 Broadway.

Mr. WALSH. That is the building owned by Mr. Stewart Browne?

Mr. ROWLEY. Yes.

Mr. WALSH. And it is the building in which Simon H. Kugel, a lawyer, has an office?

Mr. ROWLEY. Yes.

Mr. WALSH. Do you know Samuel Hershenstein?

Mr. ROWLEY. I know of him; I have not met him; I have seen him.

Mr. WALSH. Did you see him upon one occasion in the building that you are superintendent of?

Mr. ROWLEY. I did.

Mr. WALSH. And did you have a conversation with him at that time?

Mr. ROWLEY. I did.

Mr. WALSH. Just tell us what occurred there, if you will, Mr. Rowley.

Mr. ROWLEY. He and another gentleman from the United States district attorney's office wished to get access to Mr. Kugel's office, to search for some papers or records, and I told him that I could not let him in unless he had an order from the court—from the judge; that we were there to protect the tenants' property and not to do otherwise.

Mr. CARLIN. Did he want to get in without Kugel's knowledge? Was that his purpose?

Mr. ROWLEY. Well, Kugel was not there.

Mr. GARD. Was the office locked?

Mr. ROWLEY. It was locked; at least the office they wanted to get into was locked.

Mr. WALSH. What time of the day was it?

Mr. ROWLEY. About 5 o'clock in the evening.

Mr. WALSH. What did you say to them?

Mr. ROWLEY. I told them that we could not let them in there; had no authority to do so, unless they had an order from the court.

Mr. WALSH. Did you refer them to Mr. Kugel?

Mr. ROWLEY. Well, I can not remember whether I did or not at the time. It is two or three years ago that it happened.

Mr. WALSH. What was their apparent demeanor? Did they insist upon getting into Mr. Kugel's office, or were they satisfied with your statement, and did they go away?

Mr. ROWLEY. Well, of course, they did not use any force; they had to be satisfied with it; they went away when I told them that.

Mr. WALSH. At any time did you learn that Mr. Kugel's office had been broken into or entered without his knowledge?

Mr. ROWLEY. Not to my knowledge.

Mr. WALSH. Not to your knowledge?

Mr. ROWLEY. No.

Mr. WALSH. That is all of this witness, I think.

Mr. GARD. When was this that these people came there? Do you remember the time or the date?

Mr. ROWLEY. I can not remember the date, your honor. It was about two years ago, and about 5 o'clock in the evening, I should imagine.

Mr. GARD. Do you remember whether it was before or after the first trial of Mr. Kugel on the charge for which he was tried?

Mr. ROWLEY. It was during that period of his trial. I could not say whether it was before. About the period of his trial—I remember that.

Mr. GARD. While the trial was on, you mean?

Mr. ROWLEY. That I can not remember.

Mr. GARD. Who was it that came to the building?

Mr. ROWLEY. Two gentlemen. The gentlemen you spoke of—Hershenstein—and another gentleman.

Mr. GARD. Who was the other gentleman?

Mr. ROWLEY. Well, he was an Irishman. I forget his name.

Mr. GARD. What was his authority, do you know?

Mr. ROWLEY. He simply accompanied the assistant district attorney; whether he was another district attorney, I don't know.

Mr. GARD. Did Hershenstein exhibit to you any process of search from the grand jury or from any court?

Mr. ROWLEY. No; simply gave me his card—showed me his card as to who he was, etc.—but no other papers.

Mr. GARD. And he said he wanted to search Mr. Kugel's office?

Mr. ROWLEY. Yes; he wanted to look over some records that he had been informed was in that office.

Mr. CARLIN. Mr. Hershenstein is not an Irishman, is he?

Mr. ROWLEY. No, sir; I said the other gentleman was.

Mr. CARLIN. Have you any other questions you want to ask this witness, Mr. Walsh?

Mr. WALSH. No; no further questions.

Mr. CARLIN. This young man advised you that he was the assistant district attorney for the southern district of New York?

Mr. ROWLEY. Yes; your honor.

Mr. NELSON. Did he claim to be acting by any authority at all?

Mr. ROWLEY. Well, I don't know. He naturally wanted to get into the office. If he had had an order from the court or from a judge, of course that would have been a different proposition, and, I suppose, I would have had to let him in.

Mr. NELSON. He did not claim to have any authority?

Mr. ROWLEY. Oh, no.

Mr. CARLIN. Did he ask you to advise Mr. Kugel of his purposes or not?

Mr. ROWLEY. That I can not remember; I can not remember that.

Mr. CARLIN. You are excused, Mr. Rowley.

(Witness excused.)

TESTIMONY OF AARON I. FELDMAN.

(The witnesses was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Do you wish to ask this witness any questions, Mr. Walsh?

Mr. WALSH. Where do you live, Mr. Feldman?

Mr. FELDMAN. New Haven, Conn.

Mr. WALSH. Were you at any time subpoenaed to appear before the grand jury in New York in connection with the case of the United States *v.* Kugel?

Mr. FELDMAN. Yes, sir.

Mr. WALSH. On how many occasions were you called?

Mr. FELDMAN. I was here for one full week and half of the next week.

Mr. WALSH. When you first appeared here in response to the subpoena did you go before the grand jury?

Mr. FELDMAN. No, sir.

Mr. WALSH. Where did you go? What took place?

Mr. FELDMAN. I went to Mr. Hershenstein's office. Mr. Hershenstein questioned me what I knew about the Rogal & Brass case, and after I gave him the facts of the case he said that this would not do; that I would have to change my story. He said, "That don't sound right to me," and after asking me several more questions, to which I answered, he questioned me for fully two hours and told me to come back in the afternoon. In the afternoon it was a repetition of

the same thing I had in the morning. Then he told me to come the next morning. The next morning he called me into the office again, and a man, whom I afterward learned was Mr. Rogal, was in the office, and he spoke to him for a few minutes and then told him to go out, and he asked me the same questions over and over again. That happened all the same day—practically what happened the first day. The third day was a repetition of what had gone on before. That went on for nearly a week, and, in the meantime, he called in a stenographer and told him to copy down whatever questions were asked and answered.

Mr. NELSON. You said, "In the meantime." You mean the last day or the first day, or when?

Mr. FELDMAN. It may have been the third or fourth day. Several questions that were answered he told the stenographer, "Never mind putting that down; that is not necessary." And he asked me whether Mr. Kugel knew anything about the case. I told him he did not. He said, "We will have Mr. Kugel down here. I don't believe what you are telling me." I said, "Don't call Mr. Kugel down, because he is a very sick man and he can not come down here."

Mr. NELSON. That is, the senior?

Mr. FELDMAN. Mr. Kugel's father, whom I live with. He called him down. This was about the first of the next week. He called him down and asked him several questions, and it weakened him in such a way that very soon afterwards he died; and then Mr. Hershenstein asked me to tell him the story over and over again, and called me down, and called me a liar, and threatened me, and told me he would send me to jail if I did not involve Mr. Kugel. I told him Mr. Kugel had nothing to do with any of my actions. He said, "If you don't involve Mr. Kugel we will send you to jail. I will have you indicted," and about the middle of the second week he had me brought before the grand jury and he asked me several questions, but the questions that he told the stenographer not to put down he did not ask me in the grand-jury room, and then several—

Mr. NELSON (interposing). Wait a moment. Will you state some of the questions he did not want the stenographer to put down?

Mr. FELDMAN. I can not remember those, sir.

Mr. NELSON. Were they, in your judgment, material to any case?

Mr. FELDMAN. I can not recall them; this is two years ago; and some of the questions in the grand-jury room—he poisoned the minds of the grand jury by answering some of the questions that I was supposed to have answered. One of them I remember very distinctly. One of the jurymen asked me did I see Mr. Kugel. He said, "Yes; he sleeps with Kugel, eats with Kugel, talks with Kugel; he is always with Kugel."

Mr. NELSON. He said that in the presence of the grand jury?

Mr. FELDMAN. Yes, sir; told the grand jurors. During one of the times I came in there in the morning—

Mr. NELSON. "In there"? Where? In the grand-jury room?

Mr. FELDMAN. In Mr. Hershenstein's office. I did not go to the grand-jury room until the very last day I was in New York. During the first week the conversations I had with Mr. Hershenstein, I came in one morning; he had me report, and I found Mr. Rogal and a man by the name of Weinberger, I afterwards learned, and he talking together. They were sitting down, and when I came in the

three of them got up as one man, and Mr. Rogal and Mr. Weinberger left that office, and Mr. Hershenstein called me in again, and Mr. Adams was there, and after Mr. Hershenstein asked me several more questions Mr. Adams butted in and said, "Oh, he would not involve Kugel for you. Give him the dumps; send him away," and Mr. Hershenstein threatened to send me away for two years if I did not involve Mr. Kugel.

Mr. NELSON. To send you away?

Mr. FELDMAN. Yes, sir.

Mr. GARD. What did he say?

Mr. FELDMAN. "Send you to prison."

Mr. GARD. What was his language, if you can recall?

Mr. FELDMAN. "I will send you to prison if you don't involve Mr. Kugel. We don't want you; we want Mr. Kugel," he said to me; those were his very words.

Mr. NELSON. You said he said he would send you away for two years?

Mr. FELDMAN. Yes.

Mr. NELSON. You have not stated any language that would indicate that he said "two years."

Mr. FELDMAN. He said: "I will send you to prison for two years if you don't involve Mr. Kugel."

Mr. NELSON. You are sure he said "two years"?

Mr. FELDMAN. Positively.

Mr. NELSON. You were not indicted?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. Oh, you were indicted?

Mr. FELDMAN. Yes, sir; I was indicted the day after I was before the grand jury.

Mr. NELSON. What were you charged with in the indictment?

Mr. FELDMAN. Conspiring; conspiracy.

Mr. NELSON. Conspiracy?

Mr. FELDMAN. Yes.

Mr. GARD. Conspiracy to do what?

Mr. FELDMAN. To conceal assets.

Mr. GARD. Was that in connection with the Kugel matter?

Mr. FELDMAN. Yes.

Mr. GARD. Who else were indicted in the case besides you and Kugel?

Mr. FELDMAN. Mr. Rogal and Mr. Brass.

Mr. GARD. Anyone else?

Mr. FELDMAN. No, sir; not that I know of.

Mr. GARD. Were you ever tried?

Mr. FELDMAN. Yes, sir; and during the trial Mr. Wood cross-examined me, and after he got through, he read some of the questions and answers that were given, and answered by me in the grand jury room, and he said to me: "Was not this question asked of you, and did you not give this answer?" and he would not read the full answer. The answer that he used to read, was the answer Mr. Hershenstein gave in the grand jury room for me.

Mr. GARD. Were you acquitted?

Mr. FELDMAN. Yes, sir.

Mr. GARD. And the grand jury disagreed as to—

Mr. FELDMAN (interposing). Mr. Kugel.

Mr. GARD. Mr. Kugel?

Mr. FELDMAN. Yes, sir. I was acquitted after the jury were out five minutes.

Mr. NELSON. Do you regard your indictment as resulting from malice on the part of Hershenstein, because you would not involve Mr. Kugel?

Mr. FELDMAN. Positively.

Mr. NELSON. How?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. You swear positively—

Mr. FELDMAN (interposing). Positively; absolutely.

Mr. NELSON. That your indictment, in your opinion, was the result of your refusal to involve Kugel?

Mr. FELDMAN. Yes, sir; yes, indeed. He openly told me—he used the very words “We don’t want you; we want Mr. Kugel.”

Mr. WALSH. At any time when you appeared before the grand jury, were you informed by anybody that the proceeding or investigation was directed toward you?

Mr. FELDMAN. No, sir.

Mr. WALSH. This Mr. Kugel, sr., that you mentioned—how old a man is he?

Mr. FELDMAN. When he died he was 65. Mrs. Kugel soon followed him; she is dead now from grieving for Mr. Kugel.

Mr. WALSH. Was she subpoenaed before the grand jury?

Mr. FELDMAN. No, sir; but he threatened to subpoena everybody in the family if I did not involve Mr. Kugel.

Mr. NELSON. Were they brought down here when you were brought down?

Mr. FELDMAN. Mr. Kugel was brought down.

Mr. NELSON. And not Mrs. Kugel?

Mr. FELDMAN. Not Mrs. Kugel.

Mr. NELSON. You advised him, I understand, that Mr. Kugel was ill?

Mr. FELDMAN. Yes, sir; he was under a doctor’s care at the time.

Mr. NELSON. He was under the care of a doctor?

Mr. FELDMAN. Yes; under the care of a doctor at the time.

Mr. NELSON. Did you present a doctor’s certificate, or anything of that kind?

Mr. FELDMAN. He said it was not necessary; that he wanted him down here anyway.

Mr. NELSON. He told you that?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. Did you say you would bring a doctor’s certificate?

Mr. FELDMAN. I told him if it was necessary I would bring a doctor’s certificate. I did not know what the rules were. He said, “We want Mr. Kugel; we don’t want any certificates.”

Mr. NELSON. Was he on a sick bed at the time?

Mr. FELDMAN. Yes.

Mr. NELSON. Did he come down alone?

Mr. FELDMAN. He came down with me; he could not come down alone.

Mr. NELSON. Was he able to sit up in a chair car?

Mr. FELDMAN. Well, yes, sir; he was.

Mr. NELSON. What was his ailment?

Mr. FELDMAN. He had palpitation of the heart.

Mr. NELSON. Palpitation of the heart?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. On what date did he die?

Mr. FELDMAN. He died during Mr. Kugel's trial?

Mr. NELSON. During Mr. Kugel's trial?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. That is, three months, I think you said after——

Mr. FELDMAN (interposing). No; that was not hardly a month.

Mr. NELSON. A month?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. When he went home, after this trial, was he able to be around?

Mr. FELDMAN. No, sir; he went right to bed.

Mr. NELSON. He went right to bed?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. Did he ever get off that bed before he died?

Mr. FELDMAN. Just into the adjoining room.

Mr. NELSON. I know, but he was not able to do anything after that?

Mr. FELDMAN. No, sir; he was not active. I told Mr. Hershenstein not to bring Mr. Kugel down; that the shock would kill him; besides "He has not any information for you"; and he was served with a subpoena to appear before the grand jury, but he was never brought to the grand jury, he was brought to Mr. Hershenstein's office only.

Mr. NELSON. Oh, he was not before the grand jury?

Mr. FELDMAN. No, sir.

Mr. GARD. Who had charge of the examination of witnesses when you testified before the grand jury?

Mr. FELDMAN. Mr. Hershenstein.

Mr. GARD. Was Mr. Marshall in the room at all?

Mr. FELDMAN. No, sir.

Mr. GARD. Who had charge of the conduct of the trial after you were indicted and were being tried by a petit jury?

Mr. FELDMAN. Mr. Wood and Mr. Hershenstein.

Mr. GARD. Did Mr. Marshall take any part in that case?

Mr. FELDMAN. No, sir.

Mr. CARLIN. Did you go on the stand in that case?

Mr. FELDMAN. Yes, sir.

Mr. CARLIN. Did you tell the jury the same story you have told here?

Mr. FELDMAN. Absolutely.

Mr. CARLIN. And you were acquitted?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. Did you tell the grand jury the same story you told us?

Mr. FELDMAN. Yes, sir; I only had one story to tell.

Mr. NELSON. Did you tell of your treatment on the part of Mr. Hershenstein to the grand jury?

Mr. FELDMAN. No, sir. I only answered questions that Mr. Hershenstein asked me, and he answered even some of those.

Mr. NELSON. When he asked you questions at the trial as to what you had testified in the grand jury, did he have a manuscript in his hand?

Mr. FELDMAN. Yes, sir; Mr. Wood had that.

Mr. NELSON. He had the record?

Mr. FELDMAN. Yes, sir.

Mr. NELSON. And he was reading questions and answers from the record?

Mr. FELDMAN. Yes, sir.

Mr. CARLIN. Do you wish to ask any questions, Mr. Buchanan?

Mr. BUCHANAN. No.

Mr. CARLIN. You will be excused, Mr. Feldman.

(Witness excused.)

TESTIMONY OF DOROTHY HANDILMAN.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. WALSH. Your name is Miss Handilman?

Miss HANDILMAN. Yes, sir.

Mr. WALSH. Are you in the employ of Mr. Simon Kugel?

Miss HANDILMAN. No, sir.

Mr. WALSH. Were you ever in his employ?

Miss HANDILMAN. No; I was never in Mr. Kugel's employ.

Mr. WALSH. Were you ever employed in the office that Mr. Kugel occupied?

Miss HANDILMAN. Yes, I was.

Mr. WALSH. In whose employ are you?

Miss HANDILMAN. At present I am employed by Mr. James C. Harding.

Mr. WALSH. In whose employ were you when Mr. Kugel occupied the office, or was in the same office?

Miss HANDILMAN. By Mr. Willis T. Gridley.

Mr. WALSH. And your occupation was what for Mr. Gridley?

Miss HANDILMAN. I was telephone operator there.

Mr. WALSH. And you had no relations with Mr. Kugel at all; no business relations in any way with him?

Miss HANDILMAN. Just got telephone messages for him.

Mr. WALSH. Now, Miss Handilman, were you ever subpoenaed to appear before the grand jury here in New York?

Miss HANDILMAN. Yes, I was.

Mr. WALSH. Were you subpoenaed more than once?

Miss HANDILMAN. I think I was subpoenaed twice.

Mr. WALSH. And were you ever brought before the grand jury?

Miss HANDILMAN. No.

Mr. WALSH. Did you ever appear before anyone and make any statements?

Miss HANDILMAN. Yes; I met a Mr. Hershenstein in this building here.

Mr. WALSH. And what took place when you met Mr. Hershenstein?

Miss HANDILMAN. He asked me questions in reference to the bankruptcy matter of Rogal & Brass, in which Mr. Kugel appeared as attorney.

Mr. WALSH. And did you answer the question that he asked you?

Miss HANDILMAN. Yes.

Mr. WALSH. Did you know anything, as a matter of fact, about the bankruptcy case of Rogal & Brass?

Miss HANDILMAN. I knew there was a bankruptcy case on, but I had charge of the telephone switchboard, and that was all.

Mr. WALSH. Can you tell us, in a general way, what line of inquiry Mr. Hershenstein adopted when talking with you? What were the things he was asking you about, or questioning you about? Can you tell the committee?

Miss HANDILMAN. Why, when I was subpoenaed, there was some gentleman came up to the office that was not in that office at the time, and he said he was a marshal of the United States, and wanted me to go with him, and I did not know him, and I did not want to go. I told him that I wanted to see some friends downstairs and then I would go with him, and I asked him to come with me, and he got angry and said something about I had better go right away, and went away alone; and I did go downstairs, and I found that it was all right for me to come to this place, and when I got here Mr. Hershenstein and this gentleman who subpoenaed me were both there, and they said that I wanted to see Mr. Kugel before I came there. As a matter of fact, I did not know why I was there at all; and he said I wanted to see Mr. Kugel, and I did not know who I was going to see; but then he asked me if I knew of this bankruptcy matter of Rogal & Brass, and I told him I did, and he wanted to know what telephone messages went out of the office, and whether Mr. Kugel ever had any outside messages—foreign calls—I told him that he did.

Mr. CARLIN. Perhaps we would help you some if we would just ask you questions.

Miss HANDILMAN. Yes; I wish you would; it would help me to remember.

Mr. CARLIN. Suppose you interrogate the witness, Mr. Walsh.

Mr. WALSH. How long were you there being questioned by Mr. Hershenstein?

Miss HANDILMAN. I was not questioned very long, but I was kept there from about 3 or 4 o'clock until about 6 o'clock. He questioned me for perhaps half an hour or less, and then he said I had better stay until I was told to go, and I was there until about 6 o'clock, I think.

Mr. WALSH. You said, Miss Handilman, that you did go downstairs to see some friend. Who was the friend? Would you mind telling the committee?

Miss HANDILMAN. I said "friends." I did not know who I was going to see in the office. There were a number of gentlemen who occupied rooms there, and I did not know which one of them I would see.

Mr. WALSH. Why did you go down to see them?

Miss HANDILMAN. Well, I was frightened; I was never subpoenaed before, and I did not know anything about it. My employer was out of town at the time, and I wanted to have some one go with me. I did not know anything about it, but when I got downstairs I was told that Miss Jettleson had been subpoenaed and she had already left. I don't remember whether I had my hat and coat on at the

THE COURT. I went back to the office to get it, but right after that I was kept waiting here for a short while, and then I was called into the room in which Mr. Hershenstein and this other gentleman were in.

MR. WALSH. Miss Handilman, when you went downstairs did you see Mr. Kugel?

MISS HANDILMAN. No; I did not.

MR. WALSH. Do I understand that when you got to this building and saw Mr. Hershenstein you were then told or charged with having seen Mr. Kugel before you came, and after you were subpoenaed; is that right?

MISS HANDILMAN. I was told that I went downstairs to see Mr. Kugel.

MR. WALSH. The second time that you were subpoenaed was, when?

MISS HANDILMAN. Why, I don't remember; I think I was subpoenaed twice: I am not sure, but I was not put on the stand to testify. At the second trial of Mr. Kugel, why, I came, and I did testify then, but I came at Mr. Kugel's request.

MR. WALSH. The first time that you were called, you were not brought before the grand jury?

MISS HANDILMAN. I was never before the grand jury.

MR. WALSH. You were never before the grand jury?

MISS HANDILMAN. No.

MR. WALSH. Would you have any objection to stating your age?

MISS HANDILMAN. Twenty.

MR. WALSH. Twenty?

MR. NELSON. Besides stating that you had gone down to see Mr. Kugel, before you came, did they use any language to frighten you or say that they would punish you in any way if you did not tell them what they wanted?

MISS HANDILMAN. Well, I don't remember what was said to me, but I know I was very much frightened, and this gentleman that subpoenaed me was quite—

MR. NELSON (interposing). I did not hear that last.

MISS HANDILMAN. I say, I was very much frightened, and this gentleman who subpoenaed me was rather angry and indignant that I would not go with him.

MR. NELSON. That was the marshal?

MISS HANDILMAN. Yes.

MR. NELSON. Or deputy marshal?

MISS HANDILMAN. Yes.

MR. NELSON. Or whatever he was; but Mr. Hershenstein, did he use any words or was his demeanor such as to frighten you?

MISS HANDILMAN. No; Mr. Hershenstein treated me courteously.

MR. NELSON. He treated you courteously?

MISS HANDILMAN. Yes.

MR. CARLIN. Any other questions of this witness?

MR. WALSH. Nothing further.

MR. GARD. Did they ask you anything about Mr. Kugel's papers or records in his office?

MISS HANDILMAN. No; just about the telephone messages, and who kept them, whether Mr. Kugel kept them or who kept them.

MR. GARD. The record of the telephone messages?

MISS HANDILMAN. Yes.

Mr. GARD. They did not ask you about any of his correspondence, or any of his papers of a private character?

Miss HANDILMAN. No; I think they asked me if I ever took any letters from Mr. Kugel, but I don't remember taking any.

Mr. NELSON. Where did you stay in the hour and a half after he got through with you?

Miss HANDILMAN. In this building. I stayed in his room for a while.

Mr. NELSON. This room?

Miss HANDILMAN. No; his room.

Mr. NELSON. His room?

Miss HANDILMAN. Mr. Hershenstein's, and then I stayed out in the hall.

Mr. NELSON. What reason did he assign for requesting you to stay?

Miss HANDILMAN. He did not assign any reason. He asked me to stay, and said I should stay until he told me to go.

Mr. NELSON. Who told you to go?

Miss HANDILMAN. I don't remember whether he told me to go or whether he sent down word for me to go, but I know I did not leave the building until I was told to go.

Mr. NELSON. Did he know that you were waiting for him?

Miss HANDILMAN. He asked me to wait.

Mr. NELSON. Did the messenger say he was told by Mr. Hershenstein that you could go?

Miss HANDILMAN. I don't remember that; I remember I was told I could go, so I left.

Mr. NELSON. Did you stay in his room all the while?

Miss HANDILMAN. No; I stayed in his room for a while, and then I stayed out in the hall. There was a bench there, and I stayed there.

Mr. CARLIN. You are excused.

(Witness excused.)

TESTIMONY OF SOPHIE B. JETTLESON.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Will you please give the stenographer your name and address and occupation, if you have one?

Miss JETTLESON. Sophie B. Jettleson. 240 Hart Street, Brooklyn; and I am a stenographer and typewriter.

Mr. CARLIN. Mr. Walsh, do you want to ask any questions of this witness?

Mr. WALSH. Yes, Mr. Chairman.

Miss Jettleson, are you now in the employ of Simon Kugel?

Miss JETTLESON. Yes, sir.

Mr. WALSH. And were you in his employ at the time that he was arrested and indicted?

Miss JETTLESON. Yes, sir.

Mr. WALSH. And your occupation with him was that of stenographer and typewriter?

Miss JETTLESON. Yes, sir.

Mr. WALSH. How long had you been in his employ up to that time?

Miss JETTLESON. Why, I believe I came there in October, 1913.

Mr. WALSH. Do you remember the time that he was indicted and arrested?

Miss JETTLESON. Yes; about.

Mr. WALSH. When was that?

Miss JETTLESON. Why, I think it was in about March, 1914.

Mr. WALSH. March, 1914?

Miss JETTLESON. Yes.

Mr. WALSH. So you had been in his employ from the October preceding—from October to March?

Miss JETTLESON. Yes.

Mr. WALSH. Is that right?

Miss JETTLESON. Yes.

Mr. WALSH. And you live over in Brooklyn, do you?

Miss JETTLESON. Yes, sir.

Mr. WALSH. At any time, Miss Jettleson, were you subpoenaed to appear before the grand jury?

Miss JETTLESON. Well, I was served with a grand jury subpoena, but I never appeared before the grand jury.

Mr. WALSH. Can you tell us when that was that you were served with a grand jury subpoena?

Miss JETTLESON. Why, I think it was in the month of March; I am not sure, though.

Mr. WALSH. Where were you at the time you were served?

Miss JETTLESON. I was served at the office of Mr. Kugel.

Mr. WALSH. And were you served at the time this other young lady, Miss Handilman, was served?

Miss JETTLESON. Yes.

Mr. WALSH. And that was about what hour of the day, do you recollect?

Miss JETTLESON. I think it was in the afternoon. I know that I was quite busy at the time, and the party serving me wanted me to go at once, and I told him that I had some work that I had to get right out.

Mr. WALSH. Was Mr. Kugel present at that time?

Miss JETTLESON. No; he did not know I had been served then.

Mr. WALSH. Did you accompany this person?

Miss JETTLESON. No; he said that I could follow later.

Mr. WALSH. And did you follow later?

Miss JETTLESON. I believe I did.

Mr. WALSH. It was this building that you came to, was it?

Miss JETTLESON. Yes, sir.

Mr. WALSH. When you came here whom did you see, if anyone?

Miss JETTLESON. I saw a Mr. Hershenstein.

Mr. WALSH. Had you ever met him before? Did you know who he was?

Miss JETTLESON. I did not know who he was before then; no.

Mr. WALSH. What took place when you met him? What occurred there in this office?

Miss JETTLESON. Why, he asked me several questions and I replied as well as I knew how.

Mr. WALSH. Can you tell the committee the general line of questions that he asked you? What was he interrogating you about? What did he want to find out about, if you know?

MISS JETTLESON. When I was subpoenaed I did not know who had been indicted, or was about to be indicted, and then he asked me if I ever heard of such towns as Bridgeport and New Haven and Boston, in connection with my work. I said I had not; I heard of New Haven, because Mr. Kugel's people lived there, and he asked me about the general outline of the offices there—how many people were there. I told him there were about 9 or 10 people in the office at that time.

MR. WALSH. Did he ask you about with whom Mr. Kugel was corresponding in reference to the Rogal & Brass case?

MISS JETTLESON. I don't remember.

MR. WALSH. Do you remember whether he inquired of you in regard to any letters you had written for Mr. Kugel?

MISS JETTLESON. I think he did; but I don't remember just what letters he referred to.

MR. WALSH. Did he ask you to look up any letters and bring any copies or files or papers to him?

MISS JETTLESON. No; I don't think so.

MR. WALSH. How long were you there at that interview?

MISS JETTLESON. Well, I don't remember how long I was there at any particular interview, but I know at one time I was kept there. I went in the afternoon, and was in the room about 10 minutes or so, and then was told to wait outside in the hall, and told not to leave the building until I was told to go, and I was told at about 6 o'clock that I could go.

MR. WALSH. How many times, all told, did you appear at the United States district attorney's office?

MISS JETTLESON. Oh, several times.

MR. WALSH. Can you give us any idea of the number?

MISS JETTLESON. About four times, I think; I am not quite sure, though; I don't really know—three or four times.

MR. NELSON. Was it at least three times?

MISS JETTLESON. Three or four times.

MR. NELSON. It was not less than three?

MISS JETTLESON. No.

MR. WALSH. Were you questioned upon each occasion?

MISS JETTLESON. Yes.

MR. WALSH. By whom?

MISS JETTLESON. Always by Mr. Hershenstein; but I think that Mr. Wood was in the room at one time and that he questioned me.

MR. WALSH. Were you ever brought before the grand jury?

MISS JETTLESON. No; never.

MR. WALSH. Do you remember the time that Mr. Kugel's case was set down for trial? Do you remember being subpoenaed at any time on or about that date?

MISS JETTLESON. When it was set for trial I was subpoenaed as a witness at the trial.

MR. WALSH. At any time when the Kugel case was set for trial were you subpoenaed to appear before the grand jury?

MISS JETTLESON. Why, I don't remember.

MR. WALSH. You don't remember that?

MISS JETTLESON. No.

MR. WALSH. Do you remember any occasion when you were subpoenaed at or about midnight at your home?

Miss JETTLESON. No; never.

Mr. WALSH. Never? •

Miss JETTLESON. No.

Mr. WALSH. Did you testify in the trial of the United States against Kugel?

Miss JETTLESON. Yes.

Mr. WALSH. And by whom were you called? Do you know? Which side called you? Can you tell us?

Miss JETTLESON. Oh, the Government.

Mr. WALSH. The Government?

Miss JETTLESON. Yes, sir.

Mr. WALSH. I think that is all of this witness.

Mr. CARLIN. You are excused, Miss Jettleson.

(Witness excused.)

TESTIMONY OF DAVID KEEN.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. CARLIN. Mr. Walsh, do you want to ask this witness any questions? If so, proceed.

Mr. WALSH. Yes. Mr. Keen, what is your occupation?

Mr. KEEN. I am in the film business, moving-picture films.

Mr. GARD. Films?

Mr. KEEN. Yes, sir; moving-picture films.

Mr. WALSH. You are a movie man, are you?

Mr. KEEN. I don't know.

Mr. WALSH. Where is your place of business?

Mr. KEEN. My place of business was at 110 West Fortieth Street.

Mr. WALSH. Do you know a man named Wood, assistant United States district attorney?

Mr. KEEN. Yes.

Mr. WALSH. When did you first meet him?

Mr. KEEN. I met him at my office, about the 20th day of October, to the best of my recollection.

Mr. WALSH. Last October?

Mr. KEEN. Yes, sir.

Mr. WALSH. October of last year—1915.

Mr. KEEN. Yes; October of last year—1915.

Mr. WALSH. Now, tell us what took place that day, if you will, between you and Mr. Wood?

Mr. KEEN. Mr. Wood came there in reference to certain films that I had held, belonging to a concern in Colorado Springs.

Mr. CARLIN. What concern?

Mr. KEEN. Called the Pike's Peak Film Co. and the Pike's Peak Photo-Play Co., and he had represented these people, and he wanted the films that I had on hand to be returned to him. I have asked him about—

Mr. CARLIN. You say he had represented these people?

Mr. KEEN. Yes, sir.

Mr. CARLIN. In what capacity?

Mr. KEEN. I had asked him that, and he said it was not any of my business. He had asked me to return these films to him, that

he represented these clients, and I asked him what he had to show. He did have a letter from these people, from their attorney from Colorado Springs—the owners—I can get it. The name is Reeder, also a member of the firm, the film company over there. He showed me this letter, and I looked it over, and I asked him whether he had any more letters—whether he knew about a contract existing between that company and our concern—he said that he did not have to have it. He wanted these films, and if he didn't get it he will know why. Mr. Wood got very excited about it.

Mr. NELSON. Now, wait a minute. Let me just follow you there.

Mr. KEEN. Yes, sir.

Mr. NELSON. He came to you as a representative of that company, saying that he represented them?

Mr. KEEN. He did so.

Mr. NELSON. Was that your understanding that he did represent them as attorney?

Mr. KEEN. He did so, sir.

Mr. NELSON. Did he also introduce himself as the United States district attorney?

Mr. KEEN. He was introduced to me by a man by the name of Smith, that came in together in the office.

Mr. NELSON. Did he distinguish as to whether he was acting as a private attorney or as the United States district attorney?

Mr. KEEN. I am coming to the point where I put that question to him. Then, when he got a little bit loud in his tone, I said, "Mr. Wood, if you had the contract here that existed between your company and our company, perhaps you would know the conditions much better." He says, "He did not have to." I says to him, "What capacity are you in here; are you in the capacity of Government representative?" He says, "It does not matter; I represent these people and I want the films," in a very boisterous voice, and I have told him, "Mr. Wood, if he didn't know anything about it that he better leave my office." I as much as put Mr. Wood out of my office, and Mr. Wood left. Several weeks later Mr. Wood had got Mr. Smith, N. D. Smith, who had also represented these people, and they got a few other manufacturers that we had represented—that our concern had represented—which I was treasurer of, and had issued warrants for the arrest of the vice president and myself.

Mr. CARLIN. What did the warrant charge you with, what offense?

Mr. KEEN. Sir, I don't know. They charged me with using the mail to defraud. I have got a copy of the warrant in my pocket.

Mr. CARLIN. Well, read it.

Mr. GARD. Let us see it.

EXHIBIT No. 26, MARCH 1, 1916.

JANUARY 21, 1916.

Wood represents the Pike's Peak Photoplay Co. and the Pike's Peak Film Co. Otis B. Thayer is one of the officers of these companies.

N. D. Smith was local representative of these companies.

The Pike's Peak companies had about 20 negatives here in New York.

From time to time, commencing October 4 and covering a period of several weeks, Smith gave negatives to the company represented by Bard & Keen until 12 films—negatives—had been delivered by Smith.

Bard & Keen made positives and sold them in accordance with contracts with Pike's Peak companies.

Bard & Keen gave Smith money on account several times, amounting to about \$300 or \$400. Also sent one check of \$200 direct to Pike's Peak Co.'s.

On November 1, 1915, Bard & Keen Co. owned Pike's Peak Co.'s about \$500 or \$600.

Smith had been to the coast. He returned to New York November 1 and wrote Thayer. See letter marked "1."

About November 2 Smith spoke to Keen and said the manufacturers on the coast had not decided what they were going to do and he would like to have his films. Keen said arrangements—contracts—had been made with exchanges based on the contract with the Pike's Peak Co.'s, and he, Keen, could not return the films until the contracts with the exchanges had been filled. Smith said he would have to see the attorney for the Pike's Peak Co.'s, who was the attorney general in the United States courts in New York, and he, this attorney, would get the films. He gave the name of this attorney—Wood. Keen told him to go ahead.

About two or three days later Wood and Smith came to the office about 9 a. m. Keen, Parks were there; Bard came in later.

Wood and Smith came together. Wood said to Smith after they were in Keen's office, "I want that film at once." Keen turned to Wood and said, "Who are you, sir?" Wood said "I am a Government official; I am representing these people in Colorado Springs."

Keen said, "What have you got to show and in what capacity are you acting as a Government official?"

He says "I am attorney general and I have a letter here from the Colorado Springs people signed by Mr. Ritter," to the best of my recollection, and he showed me this letter.

At that moment Mr. Bard arrived, and Keen said to Mr. Bard, "Mr. Bard, this is Mr. Wood, attorney general, representing the Pike's Peak Film Co., of Colorado Springs. He is asking for the film."

Mr. Bard asked Mr. Wood at that time whether or not he was in his official capacity representing these people or as a private attorney. He said, "I am representing these people over there and I want that film."

Mr. Wood spoke very loudly and acted excitedly. On account of his action Mr. Keen ordered him out of his office later.

Mr. Keen turned around and told Mr. Wood that unless he had his contracts and all the correspondence between his company and our company that he could not possibly take this matter up intelligently and therefore to get his papers so that they could go into the necessary negotiations.

Mr. Wood loudly raised his voice and said, "If I don't get the film by 2 o'clock I will know why."

Mr. Keen, on Mr. Wood's raising his voice in this way, told him to go out of the office. He said: "Unless you can speak like a gentleman you can go out." He did go out. Mr. Wood was in the office about 15 minutes.

The company represented by Bard & Keen had had some considerable correspondence with the Pike's Peak Co. through the representative of the Pike's Peak Co., Mr. Smith. It was to this correspondence that Mr. Keen referred in his conversation with Mr. Wood.

On the afternoon of the day that Smith and Wood had called at the office, Smith called with a written demand on Mr. Keen, calling for the return of the films. Mr. Keen in return gave him a written letter to take to Mr. Wood to the effect that the Associated Films Sales Corporation will stand by the contracts absolutely and carry out everything as agreed to.

About two weeks later Mr. Otis B. Thayer called upon Mr. Bard and explained his position, and it was mutually agreed then and there to settle amicably between said Otis B. Thayer and the Associated Film Sales Co. The film was returned to Otis B. Thayer.

Nothing further was heard until about the 3d of January, when Mr. Anderson (he is the man who signed the complaint in this case) came to New York and met Mr. Smith, who took him to the office of Mr. Wood.

Anderson represented the Banner Film Co. and the Liberty Co. These companies had sent negatives to the Associated Film Sales Corporation. Positives had been made of these and contracts had been made with the exchanges in the regular routine of business.

After Smith took Anderson to Wood, Wood turned the matter over to Hershenstein. Bard learned through a friend of his that a complaint had been made, and he, Bard, and his attorney called upon Hershenstein, made a complete

statement, and offered to give Hershenstein any and all evidence which he wanted. Bard was at Hershenstein's office several times.

On January 13, Bard's attorney, Mr. Cohen, called at Hershenstein's office around 4 o'clock, and asked Hershenstein if he wanted Bard again that day. Hershenstein said no. Bard was arrested on the same day at about 5 o'clock.

The deputy marshal, John Noon, Post Office Inspector Noile, and Anderson left the district attorney's office at 4.30 with a warrant for Bard's arrest. They found Bard in his office and placed him under arrest. Bard was taken to the Federal Building, but as it was so late he was unable to obtain bail and spent the night in the Tombs. He was released on \$5,000 bail the next morning, furnished by the National Surety Co.

On January 14 Keen was served with a subpoena to appear before the grand jury, and waited all day in the Federal building. Keen saw Herschenstein, who told him to wait around there and not to go away. Keen was before the grand jury but a short time. He was asked whether or not he was treasurer of the Associated Film Sales Co., and answered, Yes. He was also asked why he did not bring down the books. He said it would take a wagon to do that.

These questions were asked by an Assistant United States Attorney (Keen describes McDonald).

Keen did not leave the Federal building until around 5.30 on January 14. The deputy marshal tried to serve a warrant on Keen on Saturday, January 15, around 12 o'clock.

Keen states that, in his opinion, the trouble which he is now in is solely due to matters of difference between the various corporations.

Neither Keen nor Bard has attempted in any way to sell stock in any corporation to the public. The stock was never advertised for sale, and Keen does not believe that there is any complaint relating to the sale or disposition of the stock of the company.

It is his idea that complaints have been made by film companies which furnished the Associated Film Sales Corporation with negatives. These negatives were all furnished by these various companies under either written or oral contracts.

It may be that there are matters of difference between these companies furnishing the films and the Associated Film Sales Corporation, but if so, there has been no intent or attempt to defraud on the part of either Bard or Keen, and they both strongly contend that the books, correspondence, contracts, and papers of the Associated Film Sales Corporation will accurately show all of the transactions and will show the receipt and disposition of all moneys coming to and paid out by the company.

Keen and Bard were both on salary with the Associated Film Manufacturers Corporation and the Associated Film Sales Corporation. Bard's salary was originally \$100 a week and expenses. After Keen became part of the concern Keen's salary was \$75 a week, and Keen states, and the books will show, that he had not drawn on an average of \$25 a week, and that Bard has not drawn more than 50 per cent of his original salary.

This money is all the money which Bard and Keen have obtained out of these film transactions.

Keen has been connected with the company since the middle of July last, but did not draw any salary until some time in September. Bard, before coming to New York, was connected with the Associated Film Manufacturers' Corporation, and is one of the board of directors of that company. He came to New York to represent his company here.

A brief outline of the business which Bard and Keen were engaged in is as follows:

About eight manufacturers of films on the coast united and formed what was known as the Associated Film Manufacturers' Corporation. Bard was living at Los Angeles and was connected with one of the corporations which went into the association.

After the formation of the association Bard was sent to New York as the representative of the association. He was to receive negatives from the various manufacturers who formed the association and others with whom he might contract. From these negatives he was to make positives. He was to contract with various film exchanges, known as the distributing offices, in the United States or elsewhere. He had a full and complete power of attorney from the Associated Film Manufacturers' Corporation, which would enable him to release the positives to the exchanges at such times as he might deem best.

Shortly after Bard's arrival here the association notified him that they were unable properly to finance him, and called upon him to procure financial assistance.

The president of the association, Dr. E. J. Boesseke, came to New York from the coast to take up with Bard the securing of financial assistance. This was about June, 1915. Boesseke remained in New York until the latter part of August.

Keen was in the film business in New York, connected with the Gotham Film Co. Bard sent to Keen a letter of introduction from one of the coast manufacturers. They met.

Back in 1914 Keen had formed a Delaware corporation, known as the Keenoscope. This company was duly and regularly incorporated under the laws of the State of Delaware. It had never done any business and none of its stock had been issued. It was in a dormant state.

Dr. Boesseke asked Keen if he, Keen, could help them get some financial assistance. Keen tried to do this, and put them in contact with various people in financial circles.

When they were unable to procure the finances a proposition was made at the meeting, that since there was no stock at the coast for the Associated Film Manufacturers to sell, and in order to finance and perpetuate the project originally intended, it would be necessary to incorporate a company here and try to raise capital to promote the film manufacturers companies.

Keen then offered his Delaware corporation, as the company had no money to do anything with, and also loaned the company some money, with a promise by them that he would get some stock for his services and money invested.

From time to time Keen loaned the Associated Film Manufacturers' Corporation prior to the formation of the Associated Film Sales Corporation about \$1,500, for necessary expenses to maintain an office and advertising and to pay the expenses of Bard.

Dr. Boesseke and Mr. Bard accepted Keen's proposition, and the name of Keen's Delaware corporation was changed to the Associated Film Sales Corporation.

Dr. Boesseke agreed to go to the coast immediately, which he did, and obtain a loan of \$10,000 from Mr. Lindbloom. Lindbloom was to receive as security a majority of the stock of the Associated Film Sales Corporation.

Dr. Boesseke went to the coast in the latter part of August. On his arrival at the coast Boesseke called a meeting of the associated manufacturers and put the proposition before them.

These associated manufacturers at this or some subsequent meeting designated Mr. D. L. Burke, who was vice president of the Associated Film Manufacturers' Corporation, to represent them. They gave Burke full power of attorney and sent him East to investigate and close the proposition. Burke came to New York.

On September 6 Burke sent a telegram to Lindbloom, copy of which is annexed, marked 2. Evidently on his arrival here, and after conferring with the parties here, the proposition was changed, as indicated by Burke's telegram.

The reason why Burke did not put through the proposition was because he did not want to give the majority of the stock to the person making the loan of \$10,000. In Burke's opinion \$2,000 would be sufficient to finance the company.

On December 6 Burke also sent a telegram to Mr. Bissell who was secretary of the Associated Film Manufacturers Association, a copy of which is annexed, marked "3."

The stock of the Delaware corporation, the Associated Film Sales Corporation, was issued in amounts of \$25,000 each to eight of the associated manufacturers.

About \$890 worth was issued to Keen and about \$80 worth to Bard; about \$300 to Cohen to qualify him as secretary. Bard was elected vice president, Keen treasurer, and Cohen secretary. The office of president was left vacant on the request of Mr. Burke. It was Mr. Burke's idea to have one of the coast men as president. Burke suggested Mr. Lindbloom. This office has never been filled.

All of these transactions took place in September.

No stock was sold to the public.

The Technical Film Manufacturing Co., of New York, wished a contract to print the positives from the negatives and agreed to buy \$15,000 worth of stock of the company if they were given this contract. The stock was to be

paid for by this printing firm in instalments, as the Associated Film Sales Corporation paid the printing company for work done. No stock was ever issued because the printing firm had not done sufficient work.

The Erie Lithograph Co., of New York, agreed to make lithographs for the Associated Film Sales Corporation, and upon the letting of such a contract they agreed to purchase \$15,000 worth of stock and pay 10 per cent from the gross business. This stock was never issued because it never was paid for. This covers practically all of the stock issued and disposed of by this Delaware corporation.

The business of this company has been outlined above. Bard went ahead and made contracts with exchanges as per his original instructions. These contracts were all in writing and they were in the office of the company when Bard was arrested.

The Associated Film Sales Corporation had an office at 110 West Fortieth Street. There they had a bookkeeper whose name was Henry Rothberg, of 1888 Third Avenue, New York, and a stenographer whose name was Elsie Ellsworth.

Mr. Keen states that the books will show the receipt by the company of all negatives and the disposition by the company of all positives, the receipts by the company of all moneys and the disposition of the same, in complete detail. The books also show the name of the film manufacturers from whom the negatives were received.

The Associated Film Sales Corporation was to pay the manufacturers of the films 5 cents per foot for the negatives. These payments were to be made as and when the receipts for the positives came in. It may be that some of the manufacturers who furnished negatives have not been paid in full for such negatives. As a matter of fact, these manufacturers have not paid in full for the stock which was issued to them. The Pike's Peak Film Co., represented by Wood, is a typical instance. This company subscribed for stock and was to pay for such stock \$2,500. At the time that Wood called upon Bard and Keen, the Associated Film Sales Corporation owed the Pike's Peak Co. for negatives about \$1,200, and the Pike's Peak Co. owed the Associated Film Sales Corporation for stock \$2,500. In other words, the balance was in favor of the Associated Film Sales Corporation. Later on a settlement was made with the Pike's Peak Film Co., the films were returned to the company, and the stock was returned by the Pike's Peak Co. to the Associated Film Sales Co.

Anderson, as above stated, represents the Banner Film Co. and the Liberty Film Co. These companies were subscribers to the stock of the Delaware corporation, namely, the Associated Film Sales Corporation, each in the sum of \$2,500.

When Anderson came on here to New York, and as a matter of fact, when he made the complaint, the companies which he represents had not paid for their stock. Each of them owes about \$1,000. They have the stock in their possession. At the time when Anderson made this complaint the Associated Film Sales Corporation did owe his companies for negatives, but his companies also owed the Associated Film Sales Corporation for stock of the latter company.

As a matter of fact, it will be seen from the above that neither Keen nor Bard has any control over any of the companies, nor have they profited financially from their association with any of these companies. The public has in no way been defrauded, nor has any of the Associated manufacturers been defrauded. If the Associated manufacturers were to-day to pay for the stock of the Delaware corporation—the Associated Films Sales Corporation—which stock they now hold, the Delaware corporation would have in its hands assets aggregating about \$25,000 over and above all liabilities.

This whole trouble has been caused by reason of the fact that the Pike's Peak companies and the companies represented by Anderson wish to have Bard and Keen eliminated. As a matter of fact, several of the Associated manufacturers wish to have Bard and Keen remain in business.

Mr. Keen has a telegram from Dr. Boesseke, which he received about a month ago, informing him, Keen, that Anderson was coming to New York for the express purpose of eliminating Bard and Keen.

After Bard's arrest on January 13, and on January 17, at around 5 o'clock, Anderson went to the office of the company. He found the stenographer, Miss Ellsworth, there. He told her he had charge of the office. He had Burke and Smith with him. He wanted her to work for him. He engaged her at \$15 a week.

On the 18th Bard and Keen were busy all day in regard to obtaining Keen's release on bail.

On the morning of the 19th Keen went to the office around 9 o'clock and found Smith there. A little later Burke came in. Then Miss Ellsworth and Samuel Goldberg, an office boy, came in. I asked them both who took the papers and the books. They both told me that Mr. Anderson took everything.

Anderson is not an officer of this association and only represents two companies which are stockholders and have not as yet paid for their stock. Burke is not an officer of the association; Smith is not an officer of the association.

On Wednesday, January 19, the postman told Keen at the office that Smith had told him, the postman, not to deliver any more mail there for Bard and Keen; that they were no longer there, and he did not know where they were.

Mr. Keen does not know what Anderson did with the books, papers, and correspondence belonging to this Delaware corporation with which, as stated above, neither Anderson, Burke, nor Smith has any connection whatever.

Smith, Anderson, and Burke went to Mr. Louis Berger, manager of the Technical Film Manufacturers Co., which prints the positives, and told him that Keen and Bard were no longer connected with the company and that by order of the court they had taken charge of the business of the company.

Mr. CARLIN. I notice one of these warrants is the name of Arthur Bard. Was he the vice president?

Mr. KEEN. He was, sir, the vice president of this concern.

Mr. CARLIN. Now, go ahead. After these warrants were served on you, were you arrested?

Mr. KEEN. Mr. Bard was first arrested on the 13th day of January, 4.30 o'clock. I phoned over to the commissioner and I asked him to be kind enough to wait until 5, so we can get the bond, when we put up the bond.

Mr. CARLIN. How much bond were you required to give?

Mr. KEEN. \$5,000 first for Mr. Bard. I want to bring out the fact—

Mr. CARLIN. Let us know about your own case.

Mr. KEEN. Oh, about my own case?

Mr. CARLIN. Yes; when did you appear before the commissioner?

Mr. KEEN. They issued the warrant for me on the 14th day, while I was all day here. They tried to take me Saturday at 12 o'clock to keep me over Sunday, but I knew there was a warrant issued for me and I kept out until Monday and got my bond.

Mr. CARLIN. How much was your bond?

Mr. KEEN. \$10,000.

Mr. CARLIN. How long after that was hearing had?

Mr. KEEN. There was no hearing at all, sir. The grand jury would find no indictment.

Mr. CARLIN. Wasn't there any preliminary hearing before the commissioner?

Mr. KEEN. We waived that. Our attorney waived that hearing.

Mr. CARLIN. You waived the preliminary hearing?

Mr. KEEN. Yes, sir.

Mr. CARLIN. And the matter went directly to the grand jury?

Mr. KEEN. The matter went directly to the grand jury.

Mr. CARLIN. Were you summoned as a witness before the grand jury?

Mr. KEEN. I was summoned as a witness before the grand jury, one day before my warrant was issued—one day before I was served with the warrant or attempted to be served with the warrant. I went before the grand jury, and I was only asked one question—whether I was treasurer.

Mr. CARLIN. Who was acting as assistant district attorney at that time, before the grand jury?

Mr. KEEN. I don't know the young man's name; a young man who assisted Mr. Hershenstein. I don't know his name; a little fellow; black mustache; one of the assistants here. He had asked me one question, and I answered it. He wanted to ask me another, and then he asked me half a question, and I told him I wished to tell the whole truth, not half of it. He excused me and asked no more. The warrant was issued the same day. I was here at 5.30.

Mr. CARLIN. The impression you got, then, was if you had delivered these films to Mr. Wood for his client that this criminal proceeding would not have been had?

Mr. KEEN. Absolutely, no.

Mr. CARLIN. Then, you mean to give the committee the impression that the criminal process of the United States was used in order to settle a private matter between you and another competitor?

Mr. KEEN. Yes, sir; and I have got further proof for it, if you gentlemen wish it here, too. I will give you further proof.

Mr. CARLIN. We want to hear it all.

Mr. KEEN. They could not succeed in getting the United States court to do these things, by reason of Mr. Wood was involved, and we immediately filed a complaint with Mr. Marshall.

Mr. NELSON. If you are coming to what I want, I will not interrupt you. I want to know what proof you have that he was actually representing this company, as a competitor.

Mr. KEEN. He had told me so, sir, personally.

Mr. NELSON. Did he show you any authority from the other attorney?

Mr. KEEN. I have got correspondence to that effect, to produce right here, that he represented it.

Mr. NELSON. Have you it right here now?

Mr. KEEN. I have it.

Mr. SLADE. I will bring it to the committee this afternoon.

Mr. KEEN. I have also witnesses to that effect.

Mr. NELSON. Give the name of the witness?

Mr. KEEN. N. D. Smith. He had difficulties with Mr. Wood, through representing these people. Mr. Wood took the agency away from them last summer prior to my case.

Mr. NELSON. What name?

Mr. KEEN. N. D. Smith; at the Flanders Hotel he lives.

Mr. NELSON. New York City?

Mr. KEEN. Yes, sir; I have got correspondence between Mr. Smith and Mr. Reeder, the lawyer over there, and other concerns, involving Mr. Wood—shows you the difference.

Mr. CARLIN. You took this matter up with Mr. Marshall himself?

Mr. KEEN. Yes, sir; by my attorney.

Mr. CARLIN. Who was your attorney?

Mr. KEEN. The man I engaged was Henry A. Wise and Mr. Whitney had attended the case entirely.

Mr. CARLIN. He advised Mr. Marshall in writing?

Mr. KEEN. In writing; yes.

Mr. CARLIN. Have you a copy of the writing?

Mr. KEEN. It is right here.

Mr. SLADE. It is with the same correspondence. We will produce it this afternoon.

Mr. KEEN. After this statement was made, for reasons I really know not, I was not present—the grand jury didn't find anything, and we were then discharged, so called, as I called discharged. In the meantime, while we were kept busy with the courts, they entered our office and took possession of the office—took the books.

Mr. GARD. Who entered your office?

Mr. KEEN. Through the power of the attorney's office here. Who they were is actually those complainants who have so conspired with Mr. Wood, as I have the proof for it—they have taken the books, the correspondence; they wrote to every customer we had in the United States.

Mr. GARD. You mean through the power of the district attorney's office here?

Mr. KEEN. Yes, sir; by subpoenas of the kind—I think I have got a copy in my pocket.

Mr. CARLIN. Do not let us get too far here. We want to get this thing straightened out. While this warrant was pending, or after the warrant was dismissed, was your place entered?

Mr. KEEN. While the warrant was pending, when I was under arrest.

Mr. CARLIN. They took your books and papers, which books and papers contained a list of your customers?

Mr. KEEN. Yes, sir.

Mr. CARLIN. Now, you say that subsequently letters were written to your customers?

Mr. KEEN. Yes, sir.

Mr. CARLIN. To what effect?

Mr. KEEN. Telling them that they understand—the letter reads somewhat, as near as I can give it to you—I believe I got a copy of it—"We understand you have done some unsatisfactory business with Bard & Keen." As a matter of fact, done business with the corporation, but put us as individuals. "We would like to have all of your correspondence. We wish if you owe any money not to pay them." They stopped all of the moneys; stopped the money with Wells-Fargo.

Mr. CARLIN. Who signed that letter?

Mr. KEEN. This was signed by the commissioner, to the best of my knowledge.

Mr. CARLIN. What commissioner?

Mr. KEEN. Commissioner Houghton.

Mr. CARLIN. United States Commissioner?

Mr. KEEN. United States Commissioner; yes, sir.

Mr. CARLIN. Is there a civil proceeding pending in the court?

Mr. KEEN. No; there is no proceeding pending.

Mr. CARLIN. Have you a copy of that letter?

Mr. KEEN. I believe I have, sir; among my papers. I have produced one before my attorney.

Mr. GARD. Was there ever any action in replevin brought by Mr. Wood, acting in his private capacity as the attorney for these people against your company, or corporation, to get these films?

Mr. KEEN. Not in our case.

Mr. GARD. In other cases!

Mr. KEEN. He had taken films away from the company represented by N. D. Smith. I really don't know whether by replevin or some mutual understanding, but I know that that has happened and that I know of for a fact.

Mr. GARD. You do not know whether that was a court process or not?

Mr. KEEN. No court process.

Mr. GARD. No court process?

Mr. KEEN. No; absolutely not. That I also know, know that from Mr. Smith himself in personal conversation.

Mr. NELSON. How was your interest adverse to this Colorado company?

Mr. KEEN. They were manufacturers of films and we were the same as commission, or were the same as commission agents. We were distributing, through the United States, their products.

Mr. NELSON. Their products?

Mr. KEEN. Yes, sir.

Mr. NELSON. You had a contract with them?

Mr. KEEN. We did.

Mr. NELSON. Was your business carried on, as you understood it, under that contract?

Mr. KEEN. It was, sir. That is why I called Mr. Wood's attention.

Mr. NELSON. Now, did they wish to break the contract, or what was their interest in the matter?

Mr. KEEN. There is something a little more than what I have stated here. There is a certain conspiracy between three or four producers to take the business in New York and put us out of the business, and they worked that around through Mr. Wood.

Mr. NELSON. Now, explain that conspiracy so that we may know how it ramifies.

Mr. KEEN. I will do that, sir. Mr. Smith had been after me. He had made a contract with our concern.

Mr. NELSON. Now, Mr. Smith is who?

Mr. KEEN. Mr. Smith is the gentleman who represented the Colorado Springs concern, the same concern Mr. Wood represented.

Mr. GARD. What is his first name?

Mr. KEEN. N. D. Smith. Mr. Smith, after making a contract with us, coming into our concern, had remained in our employ as a salaried man. After we found it was necessary for him to go to the coast on a business mission we have sent him to the coast. Getting to the coast Mr. Smith had picked up two or three other manufacturers, namely, the Liberty Film Co., the Banner Film Co.; and they have agreed to eliminate Keen and Bard and to take hold of the business he says he represented, as he did, the Colorado Springs people. They are pretty good producers, and those Liberty people were good producers, and so were the Banner, and when he came back he came to our office—Mr. Smith—and demanded his films, regardless of the condition of the contract. I refused to give it to him, and he then went to see Mr. Wood, and he and Mr. Wood came in on the morning around the 20th of October, about 9.30 o'clock, and demanded the films from me.

Mr. NELSON. Right there, when they demanded the films, did he charge then that you were putting up a scheme to defraud by using the mails?

Mr. KEEN. He did not state a word about that. I was introduced by Mr. Smith to Mr. Wood as a Government officer—Attorney General or Assistant Attorney General, I can not really recall that fact. Then Mr. Wood sat down and made his demand, in the manner I have told you.

Mr. NELSON. Now, besides Mr. Smith and his string of companies, what other film companies are interested in this?

Mr. KEEN. There are seven in all interested in this. The Banner and the Liberty went with Mr. Smith and wanted to get together to take possession of the situation. It was an internal dissension. what I would call, among the stockholders and the manufacturers. It was a private affair, and Mr. Smith went to Mr. Wood, and in coming down there they did not succeed, because I demanded a legal process served on me if I gave up any films at all. I demanded that from Mr. Wood. Mr. Wood talked to me like he thought I was a criminal. I told him I was not.

Mr. CARLIN. How old a man is Mr. Wood?

Mr. KEEN. Looks to me about 35.

Mr. NELSON. Now, I want to find out the conspiracy and the reason why they wanted to put you out of the business?

Mr. KEEN. I will tell everything. So Mr. Smith, as they didn't succeed with Mr. Wood, wrote a letter, and I have got the correspondence, and telegraphed to the Liberty and Banner that he had procured here everything, and he will get everything ready; that he can handle the business for himself, and so forth and so on; and Mr. Anderson, the gentleman who represented the Liberty and Banner, came down from California, and Mr. Anderson came in to see me and demanded his films in return, regardless that he is a stockholder of the company. There were contracts existing between people in the United States that we sold the goods and contracts existing between ourselves, and I told Mr. Anderson that I gladly give him the films, it is his property, but he would have to stand by the contract until the contract expired, and Mr. Anderson made an assertion that he will go to the Federal Government for relief. After Mr. Anderson done so Mr. Bard, who was vice president of the company, went down to see his lawyer.

Mr. NELSON. Who is his lawyer?

Mr. KEEN. Benjamin P. Kahn, 299 Broadway. Bard went down to see his own lawyer after the threat by Mr. Anderson, and his lawyer made up his mind he is going to come up and tell the officials here if there is any complaint lodged against Bard or Associated Films Sales Corporation, under which name we were doing business; that he would gladly produce anything and everything that would be required by this office. Mr. Hershenstein said "All right, there is no complaint lodged as yet. If there is, I will let you know." Two or three days later he called up Mr. Kahn and told him to bring down his client, Mr. Bard. Mr. Hershenstein came down and said there was a complaint lodged with Mr. Wood two days prior to his being down there first, but not to his knowledge, requiring certain papers. Mr. Kahn produced everything they wished. Then there was a warrant issued unexpectedly and Mr. Bard was arrested, and we offered a \$5,000 bond in cash, 5 o'clock; they refused to accept it.

Mr. NELSON. Pardon me; you are going so much in details as to ruin the affair. Who were the other firms that were interested in your elimination?

Mr. KEEN. The Santa Barbara Motion Picture Co. is one; the Alhambra Motion Picture Co., two; the Navajo, three; Pike's Peak Film Co., four; the Nola Film Co., five; the Liberty, and the Banner.

Mr. NELSON. How much business do you do?

Mr. KEEN. At present we are not doing any, sir.

Mr. NELSON. What were you doing at the time?

Mr. KEEN. At the time we opened the business, on the 13th day of September, and up to the 1st of November we done \$21,000 worth of business.

Mr. NELSON. What year?

Mr. KEEN. 1915.

Mr. NELSON. You did how much?

Mr. KEEN. \$21,000 worth of business between September 13 and November 1—around there.

Mr. NELSON. What was the nature of your business?

Mr. KEEN. Our business was to distribute these films for the manufacturers who are making them through the United States, what we call it various channels of exchanges, in order to give them a fair, proper distribution, which they had to have a New York office.

Mr. NELSON. Were these other competitors of yours engaged in identically the same business?

Mr. KEEN. No; they are not competitors, sir. They are rather stockholders of the same corporation that I and Mr. Bard have been connected with.

Mr. NELSON. What was that?

Mr. KEEN. The Associated Films Sales Corporation.

Mr. NELSON. Is that a holding company?

Mr. KEEN. Yes, sir.

Mr. NELSON. How was Mr. Wood interested in a private capacity as attorney for these other companies, if so?

Mr. KEEN. Mr. Wood, what he told me that he represented these people in Colorado Springs.

Mr. NELSON. He only represented them?

Mr. KEEN. That is all.

Mr. NELSON. Have you any knowledge of the Colorado Co. having had a meeting with these others and coming to some agreement?

Mr. KEEN. I have no knowledge of that, sir. I can not say a thing about it.

Mr. NELSON. What was the offense that you were charged with—describe it?

Mr. KEEN. I was charged, with the best I can get from that statement there, of using the mails to defraud.

Mr. NELSON. Setting up a scheme?

Mr. KEEN. Setting up a scheme or using the mails—I really never wrote a letter in my life to those people.

Mr. NELSON. You sent the films through the mail?

Mr. KEEN. No; we have not; films were sent by express. I was charged with something that I don't know anything about.

Mr. NELSON. Never brought to trial?

Mr. KEEN. Why, never brought in an indictment. The grand jury dismissed it.

Mr. GARD. Let me ask you a question now. Mr. Wood came to see you in your office, you have said, with Mr. N. D. Smith?

Mr. KEEN. N. D. Smith; yes.

Mr. GARD. Was Mr. N. D. Smith a lawyer or was he representing some one of these film companies?

Mr. KEEN. He was representing the same company as an agent prior to making a contract with us, as Mr. Wood representing them as a lawyer.

Mr. GARD. What company was that?

Mr. KEEN. The Pike's Peak Film Co. and the Pike's Peak Photo-Play Co., of Colorado Springs.

Mr. GARD. Now, when Mr. Wood came to your office did he say anything about your being arrested or indicted under process of the United States courts if you did not surrender the films?

Mr. KEEN. No; he did not mention anything about that. He just said if I did not deliver the film he will find out why.

Mr. GARD. Did he make any threats? Did he use any language which you yourself construed as a threat of something the Federal court or grand jury would do if you did not surrender the film?

Mr. KEEN. We had inferred as much that he was a Government officer.

Mr. GARD. You say inferred. Just tell us what he said there so that we may know.

Mr. KEEN. I am not positive of the very statement. He says, "I am district attorney or assistant district attorney of New York and I want these films," and then when I questioned him further he showed me that letter.

Mr. GARD. That is the letter giving him authority to represent them, you mean?

Mr. KEEN. Yes, sir; that is the letter.

Mr. GARD. Well, he represented them in his private capacity as a lawyer?

Mr. KEEN. In that respect, yes. He made me understand that he was a Government official. Till then I didn't ask for any process. Then I asked him what process he had as a Government official. He didn't say a word about that.

Mr. GARD. Did he say he had any process, as you call it, from the Government?

Mr. KEEN. No, sir.

Mr. GARD. Did he say he had not any?

Mr. KEEN. He did not say a word either way.

Mr. GARD. Just said he was United States district attorney or assistant district attorney?

Mr. KEEN. Something like that. I get mixed up; I don't know which is which.

Mr. GARD. How long did the conversation last in your office when Mr. Wood came down?

Mr. KEEN. I should say about 10 minutes.

Mr. GARD. At that time you say he talked in a boisterous manner?

Mr. KEEN. He did, sir.

Mr. GARD. And it finally resulted, as you said, in your asking Mr. Wood to leave your office?

Mr. KEEN. I did, sir.

Mr. GARD. Did he leave?

Mr. KEEN. He did leave, and he says, "I will get even with you." That is the only words he said. He didn't threaten about Government warrant or anything like that.

Mr. GARD. Said "I will get even with you"?

Mr. KEEN. "I will get even with you."

Mr. GARD. How long after he left your office when he said, "I will get even with you," was it that you were arrested on this process before Commissioner Houghton?

Mr. KEEN. Between the 20th of October and the 14th day of January.

Mr. GARD. You were not arrested until three months after that time?

Mr. KEEN. About that.

Mr. GARD. After the 20th of October, when Mr. Wood left and said he would get even with you, were you ordered or sent for to come to the district attorney's office at any time, to talk about it?

Mr. KEEN. No, sir.

Mr. GARD. Had any further talk with him?

Mr. KEEN. No, sir.

Mr. GARD. Did he appear at any time in his private capacity as attorney and come to your office again?

Mr. KEEN. No, sir; but once.

Mr. GARD. Write you any letters?

Mr. KEEN. No, sir.

Mr. GARD. You say once. Did he come after that?

Mr. KEEN. That one time.

Mr. GARD. That one time; and did not come any more?

Mr. KEEN. No, sir.

Mr. GARD. Then the next development was that you were arrested on this process, which charges you with conspiring to defraud and using the mails in the attempt to carry out the conspiracy?

Mr. KENT. Yes, sir.

Mr. GARD. And on that you gave bond in the sum of \$10,000?

Mr. KEEN. Reduced it to \$7,500.

Mr. GARD. And then your attorneys waived your examination before the commissioner?

Mr. KEEN. Yes, sir.

Mr. GARD. And the matter was sent to the grand jury?

Mr. KEEN. Yes, sir.

Mr. GARD. And the grand jury returned no indictment?

Mr. KEEN. Yes, sir.

Mr. GARD. Now, were the films afterwards procured by this company through any civil litigation?

Mr. KEEN. No; they have used another criminal matter. After the discharge, returning the books and papers to us, they have turned them over to the county district attorney a day or two prior to the grand jury discharging this case; they handed over all the books and papers.

Mr. GARD. You say "they"; who do you mean?

Mr. KEEN. Mr. Marshall's office, Mr. Wood, and Mr. Hershenstein.

Mr. GARD. United States district attorney's office?

Mr. KEEN. United States district attorney's office.

Mr. GARD. Turned over all of the matter to the county district attorney?

Mr. KEEN. To the county district attorney, and also furnished them with part of the minutes that was before the grand jury.

Mr. GARD. Have you been indicted by the county grand jury?

Mr. KEEN. No: the county attorney looked into the matter and called my attorney's attention that if he returned the films he will not find any indictment, or will not go into the matter at all. Finally, our attorney advised us there was nothing in it for us; we were fighting for a corporation: we had better clear ourselves and give up this stuff, in order not to have any indictment against us.

Mr. GARD. Who was that attorney that so advised you?

Mr. KEEN. Mr. Whitney.

Mr. GARD. Mr. Whitney and Mr. Wise?

Mr. KEEN. Mr. Whitney. Mr. Wise was not in it. Mr. Whitney attended to the matter.

Mr. GARD. Is Mr. Whitney associated with Mr. Wise?

Mr. KEEN. He is in his office.

Mr. GARD. The final determination was, as a result of advice by Mr. Smith, who was your attorney, you surrendered the film?

Mr. KEEN. I did, sir; couldn't help myself. I was held up.

Mr. GARD. And there has been no indictment by the county grand jury?

Mr. KEEN. No, sir.

Mr. GARD. Or no further Federal arrest or anything?

Mr. KEEN. Nothing at all.

Mr. GARD. And you have given now in answer to my questions, a rather complete statement of everything that happened?

Mr. KEEN. Absolutely, sir; up to this minute. I don't know anything; neither indictment or anything else.

Mr. WALSH. Mr. Keen, was Mr. Marshall's attention ever attracted or ever called to this case? Yes or no, please; was it or was it not?

Mr. KEEN. I understand it was.

Mr. WALSH. Have you any knowledge of that yourself?

Mr. KEEN. Only through being told by my attorney.

Mr. WALSH. By Mr. Whitney?

Mr. KEEN. By Mr. Whitney.

Mr. WALSH. Mr. Whitney is here as a witness, is he not?

Mr. KEEN. I presume he is, sir.

Mr. WALSH. Do I understand that a man named Bard was associated with you in this film business?

Mr. KEEN. Yes, sir.

Mr. WALSH. And the first visit from Mr. Wood was with you, was it?

Mr. KEEN. To my office.

Mr. WALSH. And then came Mr. Smith and Mr. Anderson?

Mr. KEEN. Mr. Smith and Mr. Wood came together.

Mr. WALSH. The first time?

Mr. KEEN. The first time.

Mr. WALSH. Then who came the second time?

Mr. KEEN. Mr. Anderson came several times.

Mr. WALSH. How long after Mr. Wood first called, did Anderson call?

Mr. KEEN. I guess a matter of six or seven weeks before they wrote to him to the coast to come down here—took that much time for him to come.

Mr. WALSH. Now, at that time, did you tell Mr. Wood that you claimed the right to hold this by virtue of some contract?

Mr. KEEN. I did, sir; told them all the same thing.

Mr. WALSH. You say three months after that?

Mr. CARLIN. We have been all over that.

Mr. WALSH. I want to lead up to the matter of his arrest. You say you were arrested on Monday, were you?

Mr. KEEN. They tried to serve me on Saturday, but I surrendered on Monday.

Mr. WALSH. Was Mr. Bard arrested on Saturday?

Mr. KEEN. Was arrested on Thursday night, 5 o'clock; kept in the Tombs overnight.

Mr. WALSH. Is Mr. Bard here, do you know?

Mr. KEEN. No; but I can get him here.

Mr. WALSH. Whether or not as a result of your attorney's taking this matter up with Mr. Marshall, somebody was appointed as an umpire or referee to determine the matter?

Mr. KEEN. That is what I have been advised, that Mr. Marshall heard the case with reference to Mr. Wood, and that he decided to appoint an outsider as a referee, to decide whether or not there was a case against Keen and Bard.

Mr. WALSH. Who was that referee?

Mr. KEEN. To the best of my recollection I heard the name—never seen the gentleman.

Mr. WALSH. Who was it?

Mr. KEEN. Mr. Wample; I never seen the gentleman: I heard about him.

Mr. WALSH. Do I understand that you want the committee to understand that because of Mr. Wood's activities, your business has been destroyed?

Mr. KEEN. Absolutely, sir; facts.

Mr. NELSON. Did Mr. Wood continue on this matter as district attorney after he advised you that he was acting as private attorney?

Mr. KEEN. The complaints, as I understand, were filed with him, and he handed them to Hershenstein, and Hershenstein continued as attorney in the case.

Mr. NELSON. What do you know of his connection with Hershenstein? Were they together at any time?

Mr. KEEN. I do not know that, sir; but Mr. Hershenstein told me personally, only a week ago, right here in this entry, that Mr. Wood was the cause of asking for my high bond. I have complained to Mr. Hershenstein and he met me here, shook hands, and said "I hope you will forgive me." I said "You done your duty towards your superiors."

Mr. GARD. Hoped he would forgive you?

Mr. KEEN. Yes. Don't know why; and I told him he had aided his superiors. He says "It wasn't me that put that high bond on you; Mr. Wood asked that." I says "I know all about that."

Mr. NELSON. Did you have any trouble in getting your bond?

Mr. KEEN. Well, I had to get a brother of mine in Philadelphia to go on the bond. The National Assurance Co. went the bond for him. I had no difficulty, but a question of time.

Mr. NELSON. Were you put in the Tombs at any time?

Mr. KEEN. No; I kept away over Saturday. I knew they were looking for me. Not to stay Sunday in jail, I kept away until Monday morning. I know they wanted me in jail very badly.

Mr. NELSON. How do you know that?

Mr. KEEN. By the expressions about here. When they subpoenaed me. I know they are sore and want me in jail; and they said. "That is the fellow we want." A sort of intuition—I have been told by side issues around here; by friends; I can't tell very well; people who know me very well told me the day I was subpoenaed—on the 14th—that a warrant was issued. I expected it will be served that day, and I would give bond. I knew, and I kept away Saturday from my office.

Mr. NELSON. You wanted to spend Sunday with your family?

Mr. KEEN. I did, sir. Bard was in jail. They caught him right quick and put him in jail overnight. Offered \$5,000 cash bond; would not accept it. Mr. Hershenstein says half a million wouldn't do it.

Mr. CARLIN. Would not take any bond at all in that case?

Mr. KEEN. No clerk. no judges, nobody ready, and everybody was out.

Mr. GARD. What attorney represented this Liberty Film Co. when you finally agreed to surrender the films? Who was representing that firm?

Mr. KEEN. Why, Mr. Goldsmith; Henry and Freddie Goldsmith, well-known gentlemen in this town.

Mr. GARD. Did Mr. Wood retire from representing them at that time?

Mr. KEEN. Mr. Wood never did represent these folks. He represented the Pikes Peak.

Mr. GARD. I see that this affidavit upon which you were arrested was made by Charles Anderson, who says he is the secretary of the Liberty Film Co., a corporation organized and existing under the laws of the State of California.

Mr. KEEN. That is due to the fact Mr. Anderson represents Mr. Lindbloom, who is worth about \$10,000,000, and Mr. Lindbloom says, "We will put these fellows in jail, no matter how much we got to spend." Mr. Anderson made that assertion and boasted about it all around.

Mr. GARD. What I am trying to get your attention to is whether or not, after you were arrested in this Federal court upon this charge, Mr. Wood still continued to represent this film company in a private way?

Mr. KEEN. I really do not know, sir. It is a matter I can not answer truthfully.

Mr. GARD. But you think, when the matter was finally settled, that your attorney, Mr. Whitney, took up the matter of settlement with Messrs. Goldsmith?

Mr. KEEN. No; two brothers, Messrs. Goldsmith, had called my attorney, as I understand, to meet them only day before yesterday, sir.

Mr. GARD. Day before yesterday?

Mr. KEEN. Yes, sir. And they have concluded if we return them the film not to bring these charges against us or to indict us in the county court.

Mr. NELSON. What did they say you were guilty of?

Mr. KEEN. Nothing, sir. Mr. Broughan, who is the assistant to Mr. Swann, had been present, and Mr. Broughan at my office requested from my attorney if we turned over the films, that you will not find an indictment. There wasn't any grand jury investigation yet. He simply had all of the books and papers there and he looked over and he had the minutes of the grand jury from this court, as I could learn.

Mr. CARLIN. What is his name?

Mr. KEEN. Mr. Broughan.

Mr. CARLIN. Mr. Clark, issue a subpoena for Mr. Broughan.

Mr. GARD. Are these Goldsmiths a firm of lawyers?

Mr. KEEN. A firm of lawyers; yes, sir. I have protested to my attorney for using the courts for a collecting agency or straightening out matters among merchants, and my attorney says, "You see what you are up against; what is the use; it is no benefit to you; might as well give it up; really no money consideration. It is not for me."

Mr. CARLIN. We will take a recess until 2 o'clock.

(An adjournment was taken at 1.05 p. m. to 2 p. m.)

AFTER RECESS.

The subcommittee reconvened, pursuant to the taking of recess, at 2 o'clock p. m.

TESTIMONY OF MR. FRANK MOSS.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Moss, were you the counsel for Mr. Kugel in the case of the United States *v.* Kugel?

Mr. MOSS. I was one of the counsel.

Mr. CARLIN. One of the counsel. Can you tell the committee of any improper practice—anything that you regarded as improper practice—on the part of the district attorney's office, with special reference to some of the witnesses of the defendant, before the grand jury just previous to the trial?

Mr. MOSS. Well, whether the practices were improper or not would, of course, depend upon the consideration of all the facts. I did not expect to be called as a witness; I am not a volunteer; I am here under subpoena, without any previous discussion or conference with anybody; but I suppose the matter of which you inquire has reference, or would be shown by two letters which I wrote to Mr. Marshall during the progress of that case, and which my associate in that case, Mr. Slade, had. There are certain facts stated in those letters, as I understood them, and I wrote Mr. Marshall remonstrating with certain things that were then occurring in that case.

Mr. CARLIN. Just state, to the best of your recollection, what were the things you complained of.

Mr. WALSH. If the committee pleases, I have copies of the letters here.

Mr. CARLIN. I understand that.

Mr. MOSS. Well, the particular thing that I complained of was the examination of witnesses before the grand jury while the case was proceeding, or just about as it was to begin. I have forgotten whether the case was actually on trial or whether it was about to be tried; but Mr. Kugel's partner was subpoenaed as a witness before the grand jury, and I did not want him examined before the grand jury while the case was on or just about to be tried, and I wrote a letter of protest—

Mr. CARLIN (interposing). I understood you wrote that letter as counsel?

Mr. MOSS. Yes.

Mr. CARLIN. But I am trying to get your impressions now as to that peculiar character of practice. Was it your idea that he was summoned before the grand jury in order that the grand jury might have the benefit of the testimony he expected to give upon the trial?

Mr. MOSS. That is the reason I objected. I feared that might be so. Defending my client, Kugel, who was Saxe's partner, I was just as anxious to prevent an examination of Saxe right on the eve of the trial, or during the trial, as evidently Mr. Marshall was to get it, and I wrote my letter of protest, and wrote it in a formal way, so that it would be a record.

Mr. CARLIN. Will you look at those letters and see if they are copies of what you wrote?

Mr. MOSS. Yes, sir; these letters were shown me a moment ago, and I recognized them.

EXHIBIT No. 27. MARCH 1, 1916.

UNITED STATES v. KUGEL.

MARCH 12, 1914.

HON. H. SNOWDEN MARSHALL,
United States District Attorney.

MY DEAR SIR: The other day an agent of the Government called upon the defendant Feldman at New Haven, and interviewed him without any notice to his attorney, whose office is in New Haven.

Yesterday Mr. Slade was called before the grand jury.

Today Mr. Kugel's clerks have received subpoenas to appear for examination.

As to this last matter, if it were in the State court it would be under the provision of section 835 of the Code.

It is obvious to me that the Government is using the process of the grand jury to break into our case; to secure alleged statements of witnesses—and to do it in such a way as to deprive them, and deprive us, of a knowledge of questions asked and answers given.

I wish to register my protest against this method of procedure, and I make it in the form of a letter so that I may be able to refer to it in the future.

Yours truly,

(Signed) FRANK MOSS.

P. S.—I find that one of Mr. Kugel's former clerks, a young lady, was subpoenaed last night about midnight, at her home—frightened—and was required to be present in the courthouse at half past 8 this morning. If nothing else is done to our witnesses, such a course tends to frighten them, make them fear the Government, and make them afraid to testify freely and without constraint.

EXHIBIT No. 28, MARCH 1, 1916.

UNITED STATES v. KUGEL.

MARCH 18, 1914.

HON. H. SNOWDEN MARSHALL,

*United States District Attorney,**Post Office Building, New York City.*

MY DEAR MR. MARSHALL: This case is on the calendar and has been called a number of days and is marked for Monday.

A grand jury subpoena requires the presence and testimony this morning of Mr. Saxe, the partner of Mr. Kugel (and one of the firm which represented Rogal & Brass in the bankruptcy). Mr. Saxe is of counsel for Kugel in the pending case, and I am counsel with him.

The situation is, that on the eve of trial you are preparing your case in my camp under the secrecy of grand-jury procedure, using my associate as a witness, and calling upon the defendant's partner to testify concerning every matter which puts Kugel now in as a defendant. For reasons sufficient to you, I have been denied an examination of Brass's statement. This is a situation entirely new to me, and it bewilders me, though I have had some experience in preparing and prosecuting cases. I request you to countermand this subpoena in the interest of fair play.

Yours truly,

(Signed)

FRANK MOSS.

MR. CARLIN. Was your protest made after Mr. Saxe was called, or after he had testified, or before?

MR. MOSS. My impression is, before he had testified. I think that Mr. Saxe notified me he had been required to appear. Just how soon my letter got to the district attorney, I do not know, but my intention was to notify him at once.

MR. CARLIN. Did Mr. Marshall reply to your communication?

MR. MOSS. I do not remember having had any reply—any formal reply to those letters.

MR. CARLIN. Did you ever talk with Mr. Marshall about it?

MR. MOSS. I do not recall any conference. I had some discussion with one of the assistants at or about that time, in which he said that the charge in which Kugel was involved was a conspiracy; that they did not believe they had all of the conspirators; that the matter had never been closed before the grand jury; and that testimony would be taken as they could get it, with the idea of involving others, whom they believed to be guilty, and, if my recollection serves me right, my response to that was that they ought to hold it off while the trial was on.

MR. CARLIN. Did you think they were acting in good faith in that matter?

MR. MOSS. I have no right to impugn their good faith. I have been a prosecutor myself, and have sometimes had to take strong hold of a case. I do not recall anything just like this, but I can appreciate the position of a prosecutor, who thinks that he has a great public duty to perform; thinks he has obstacles, and goes at them. I objected to it in this case.

MR. CARLIN. Have you ever known it to occur heretofore?

MR. MOSS. It is the only case I knew of, but I have not had a large criminal practice in this court. I have tried some cases since. This was shortly after I left the prosecutor's office in the county of New York, where I was for four years. Since that trial I have tried some criminal cases here.

MR. CARLIN. Have you had similar experiences?

Mr. Moss. No; my experiences since that case have been very comfortable; indeed, I have had all the favors I was entitled to since that case. They gave me the impression that they thought they had a great duty to perform, with which I did not agree, and that they did what they thought they ought to do, and I did not agree with that.

Mr. CARLIN. As a matter of fact, were there any other indictments found?

Mr. Moss. No. I am under the impression now, and I believe it to be true, that in this conversation that I referred to, the name of one of the witnesses was mentioned by the assistant district attorney as one whom he believed to be in the conspiracy, but not a witness—not Saxe, but another one.

Mr. CARLIN. Do you want to ask any questions, Mr. Walsh?

Mr. WALSH. No; Mr. Chairman.

Mr. CARLIN. We are very much obliged to you, Mr. Moss, and we will excuse you.

Mr. Moss. Thank you.

Mr. CARLIN. These copies of letters we can put in the record. Just mark them as exhibits.

Mr. Wise, will you take the stand?

TESTIMONY OF HENRY A. WISE.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Wise, were you formerly United States district attorney for the southern district of New York?

Mr. WISE. Yes, sir.

Mr. CARLIN. Was your firm counsel for Bard & Keen?

Mr. WISE. Yes, sir.

Mr. CARLIN. Without, of course, asking you to testify about any confidential matter, would you mind giving the committee your recollection of the conduct of the district attorney's office in reference to that case?

Mr. WISE. I have spoken with Mr. Keen; I have not had opportunity to speak with Mr. Bard, so I hesitate to disclose all of the communications that were made to me by those gentlemen without first having their waiver, but, briefly, Mr. Keen retained me to represent him, and so did Mr. Bard, and my retainer, as I recollect, was after the arrest of Bard and before the arraignment of Keen. These gentlemen told me that they had been in the motion-picture film business in this city; that Bard had come here from California as the agent and representative of seven manufacturers of films. I do not remember the names of those seven manufacturers, but I heard Mr. Keen mention some of them here to-day. The manufacturers supplied them with what are known as negative films, and they, in turn, had positive films manufactured from the negatives, and sold or leased those positives to the exchanges, which, in turn, distributed them to the motion-picture houses; that some controversy had arisen between them, as agents, and their employers, and some months prior to them time when they came to me, Mr. Wood, an assistant United States attorney, had come to the office of this corporation, of which

Bard & Keen were officers, and as private attorney for the person whom he was then representing, a man named Smith, as I recollect it, demanded the return of the negatives which had been furnished to them by Smith; that some discussion took place there; in that discussion Mr. Wood's official title was referred to, but, as I understood it, he did not claim then to be acting in an official capacity, but was only, in a way, giving his position or describing himself.

Mr. CARLIN. Was he there as counsel?

Mr. WISE. He was representing Smith, who was an officer or employee of one of these seven manufacturing concerns, and those seven manufacturing concerns were the employers, so to speak, of Bard & Keen. Nothing resulted except the conversation, and Mr. Wood disappeared or went away. Subsequently Keen or Bard was arrested on a warrant issued by Commissioner Houghton here on a complaint sworn out by a man named Anderson, who was the agent or representative of one of these film companies which employed Bard & Keen. Bard waived examination before I came into the situation, and it was apparently known by Keen that there was a warrant out for him, and instead of allowing himself to be arrested, he came to my office and I brought him up here, or my associate brought him up here and submitted him to the jurisdiction of the commissioner's court, and gave bail and waived examination.

Mr. CARLIN. Now, about the bail. Did you consider the bail that was asked for in that case excessive?

Mr. WISE. I do not know. I certainly argued that it was excessive; that was my business. I told my associate to do so. All bail is excessive when you represent a defendant, and none is sufficient when you are a prosecuting attorney.

Mr. CARLIN. But as a witness now do you consider that bail excessive as asked for?

Mr. WISE. Why, I thought \$5,000 would be sufficient, but that was not the district attorney's business; it is his business to demand all that he can get, and it is for the court to decide what is right. It is very little that any of us ever get if we do not ask for it.

Mr. CARLIN. You do not think it is the business of a district attorney to ask for excessive bail, do you?

Mr. WISE. Well, you start high, in the hope of reaching a proper point. That is the way I did it always, and I never considered that I was doing any more than serving my then client. I always knew if a man was going to ask for a thousand dollars' bail I ought to ask for ten thousand, and we would hit it at \$5,000. If you started at \$5,000 you would probably get \$2,500, and that is not what you ought to have.

Mr. CARLIN. The commissioner usually fixes the amount of bail asked for by the district attorney, does he not?

Mr. WISE. I do not know. I have not had much experience with this commissioner, but he has never, in any case in which I have appeared, given all that they asked. He has generally listened to me, too, and split the difference generally. We were willing to give \$5,000; they were asking \$10,000, and the commissioner made it \$7,500. As a matter of fact, bail is a thing that is of doubtful value, anyway; any man who is going to forfeit his bail will forfeit any amount he can put up, and in an experience of 11 years as prosecuting

attorney, I have never seen any amount of bail that would hold a man that did not want to stay, and I do not think those who did stay, stayed on account of the amount of bail that was fixed.

Mr. CARLIN. I interrupted you in your narrative.

Mr. WISE. These gentlemen, after Mr. Keen, or about the time that Mr. Keen came up here and gave bail, told me that Mr. Wood had previously been the attorney for one of these manufacturer corporations and had come there with Smith to make this demand. I thought—and, mind you, Wood was my appointee; when I was United States attorney I had him appointed as an assistant, and Mr. Marshall inherited him from me—I thought that Wood had been indiscreet. I knew the boy was straightforward and honest, and I thought he had been indiscreet, if this matter had come to his attention; and, for his protection as much as that of my clients, I immediately sent my associate, as I had to go out of town, to see Mr. Marshall and tell him not to allow anything to be done in this matter until I could talk with him. I came back to town, went to see Mr. Marshall, and presented the matter to him, and he did what any fair and just man would do; he said, "I will look into this matter," and he did. He sent for me again, and he said, "I am not satisfied that these men have not been guilty of a violation of the statute in question, to wit, the statute against the use of the mails in schemes to defraud; but, as Mr. Wood has had a private relation in this matter, I would rather have this matter passed on by somebody outside of my office"; and I said, "Name the man," and he named William L. Wemple, who was formerly Assistant Attorney General and at one time an assistant United States attorney. The matter was submitted to Mr. Wemple. Mr. Hershenstein went down from the district attorney's office and presented their side of the case, and Mr. Whitney presented our side of the case, and Mr. Wemple decided that no crime had been committed and that, in his opinion, the facts here were not facts on which a prosecution under that statute ought to be had; and when he reported that to Mr. Marshall, Mr. Marshall withdrew the proceedings from the grand jury. That is the whole situation. He was absolutely fair in it in every respect.

Mr. CARLIN. With reference to Mr. Wood's relation to the matter, did you gather the impression from your knowledge of the case that Mr. Wood was using the process of the Federal Government in the matter of procuring an indictment for the purpose of aiding a client in a civil matter?

Mr. WISE. No. I think Wood was just careless in the matter. I think that when this man Anderson went to the district attorney's office, if Wood had been an older and more discreet man, he would have gone to his chief and said, "Mr. Marshall, I have been in this matter on the civil side, and it does not seem to me that I ought to be passing on the criminal aspect of it; turn it over to somebody else." But, instead of doing that, he, lacking judgment, passed it out to Hershenstein and left it to Hershenstein, and Hershenstein in the zeal of youth went forward with it. I know the two men too well to believe that either one of them could be actuated by any improper motive. I appointed both of them in that office. Hershenstein was my assistant and Wood was my assistant, and of twenty-odd I left there they and two others are the only ones remaining there

now. They are both absolutely honorable men, and a fine-tooth combing of their whole lives will not disclose anything to the contrary.

MR. CARLIN. Mr. Wise, while you are here, if you do not mind, I would like to inquire about the practices with reference to summoning witnesses for defendants under indictment before grand juries while those indictments are pending for trial. What was the custom when you were district attorney?

MR. WISE. I know of no such practice. I understand a grand jury to be a body which is to inquire into and ascertain whether there is probable cause for believing that crime has been committed. It is not an uncommon thing that cases are presented before a grand jury in a half-baked way and indictments returned, and the prosecuting attorney, after such indictments may have been returned, on an investigation or further investigation, to conclude that he has not gotten all the people that ought to have been gotten; or that, maybe, there may have been one who ought not to have been gotten, and to re-present the cases, and to call witnesses. Now, your honor speaks of witnesses for the defendant. I have never been able to differentiate in my own mind as to who a witness belonged to. As I understand it, the witnesses are witnesses in the case, and the Government, of course, ought to examine every witness who has any knowledge of the facts.

MR. CARLIN. Then, take the calling of the counsel for the defendant, as in the case cited to us.

MR. WISE. I know of no such thing. I never heard of such a thing being done.

MR. CARLIN. In the peculiar case that was represented to us, I think, his own counsel was called and his own partner was called, while his case was practically at the bar or about to come to trial.

MR. WISE. I do not know of any such practice that has ever prevailed here. I never heard of any other instance.

MR. CARLIN. Would you consider a thing of that kind proper?

MR. WISE. I would not. I do not believe Mr. Marshall would, either. I know of no man for whom I have a higher regard, or of any man who has a keener sense of justice, and I am sure that if that matter had been put to him in the proper way that, if anything improper was being done, he would not have tolerated it for a minute.

MR. CARLIN. The testimony before us was from Mr. Moss. Do you know Mr. Moss?

MR. WISE. Very casually. I know him, of course, by reputation very well.

MR. CARLIN. Mr. Moss addressed a letter to Mr. Marshall inviting his attention to that state of facts.

MR. WISE. Maybe that letter never went into Mr. Marshall's hands. He certainly would be the man to explain that. If you do not know the machinery of that office, I may explain—

MR. CARLIN (interposing). I wish you would.

MR. WISE. It is a large office: there are some 75, I imagine, employees of one kind or another in the office; there are 18 or 20 assistants; the office is not altogether a prosecuting office; it is the United States civil, as well as criminal, lawyers' office. That would be a combination of a corporation counsel's and a commonwealth attorney's office. He handles civil and criminal matters.

Mr. CARLIN. Such a letter as that, addressed to Mr. Marshall, would go into some other hands before it reached him?

Mr. WISE. All mail arriving in that office reaches the hands of the mail clerk; a clerk opens all of the mail, unless it is marked "Personal" or "Confidential," or something of that sort. That clerk, automatically, knowing by reference to his dockets, who is handling the matter referred to, will send that letter to the assistant who has charge of the matter, and, under those circumstances, unless the assistant brought it to the attention of the chief, he would not know anything about it. He could not handle everything in the office. I should say there are over a hundred letters going through the office every day, and he can only be the boss of the office, and try to see that his assistants are doing their work properly.

Mr. CARLIN. Mr. Wise, perhaps you can tell us about the custom that has been testified to here, of examining witnesses in the office of the assistant district attorneys.

Mr. WISE. That is a common and an old custom. It is a custom by assimilation, I might say. In a large community like the one in which we live, if every witness whom the United States attorney and his assistants have to see were taken before the grand jury, we would have to have about five or six grand juries, and we would keep about 120 men sitting in these rotten old rooms in this building, day in and day out, listening to a lot of stuff that would not enlighten them at all. About five men are examined by a lawyer for every one man that he puts on the witness stand, as you probably know from your experience as a lawyer. In the county district attorney's office they have their grand jury, but the Legislature of New York has given the district attorney a part that relieves the grand jury from listening to all of this talk between trial counsel and possible witnesses. He can issue a subpoena, and bring anybody he wants there to his office and examine him.

Mr. CARLIN. The United States district attorney accomplishes the same thing by a John Doe proceeding, does he not?

Mr. WISE. No; the United States attorney accomplishes it in this way: Many cases are directed against "John Doe" because they don't want the man who is under investigation to know that he is under investigation, and give him a chance to stall the case; so that they usually proceed against an unnamed person. If they did not, they would lose about half of them that they went after. Now, they issue—the only kind of subpoena that can be issued is a grand jury subpoena. When the witness arrives at the grand jury room he is invited to come down to the district attorney's office. If he does not accept the invitation he is taken into the grand jury room and examined; if he does accept the invitation, he is examined in the district attorney's office. The burdens of the grand jury are lightened, and the administration of justice is somewhat improved by that method.

Mr. CARLIN. Do they not have a request card that they issue? "You are requested to come to the district attorney's office?"

Mr. WISE. I never heard of such a thing. I do not know of any such thing; but they might write a letter to a person asking him to come to the district attorney's office. Certainly, if I were the district attorney, or an assistant, and I had a matter under investigation, and I thought that a person would respond, without having to

be brought on subpoena, I would call him on the telephone or send him a note, and ask him to come up and see me. I have done it with perhaps all of the largest men in this community.

Mr. CARLIN. There has been testimony before us that a paper was issued, which, in form seemed to be a process, and, when analyzed amounts to nothing but a request to appear at the district attorney's office; that that is served by the marshal, and the impression made upon the mind of the layman is that he has an official summons from the district attorney's office.

Mr. WISE. Have you seen the paper?

Mr. CARLIN. No; I have not, yet.

Mr. WISE. Well, I never saw any such paper, and I do not believe any such paper exists. It certainly never did exist in my time, and in my practice as attorney for defendants, I have not had opportunity to see it. You will have lots of people to tell you what is in papers, but when you see the papers it is not there.

Mr. GARD. We were told that by the clerk of the court.

Mr. WISE. Well, he ought to produce the paper.

Mr. GARD. He also ought to know what he is testifying to.

Mr. WISE. Well, I do not know anything about the paper. I never saw it or heard of it.

Mr. CARLIN. I asked him, and he said it was the custom in your term to do that very thing.

Mr. WISE. To issue a request?

Mr. CARLIN. A card. He used the word "summons."

Mr. WISE. Then, I am guilty of ignorance of any such thing.

Mr. CARLIN. Who was the clerk? Leary, I think was his name.

Mr. GARD. Or Gilchrist.

Mr. CARLIN. Or Gilchrist; one or the other.

Mr. WISE. I never saw it or heard of it.

Mr. CARLIN. Served in the usual way, by the marshal or his deputy, upon a citizen, and the effect upon the citizen's mind is such as to create the belief that he has been summoned lawfully to come to the district attorney's office, and then he comes and proceeds to tell what he knows. If he refuses to come, then, of course, a grand jury summons is issued.

Mr. WISE. It may be some innovation; but it seems to me the end justifies the means. They might have dragged him to the grand jury room to examine him, which would have been more inconvenient for him, more inconvenient for the district attorney, and more inconvenient for the 23 men on the grand jury.

Mr. NELSON. What proportion of the criminal cases would you say are conspiracy cases handled by the district attorney for the southern district of New York?

Mr. WISE. I could not give you any real approximate estimate. Of course, the records would show, but it is a very large proportion.

Mr. NELSON. 90 per cent?

Mr. WISE. No.

Mr. NELSON. Where would you put it, if you were making an estimate?

Mr. WISE. Well, when I was there I tried to put in a count under the conspiracy statute in every indictment, where the facts would support it.

Mr. NELSON. Is that the case now?

Mr. WISE. I think it is; and I think it is right.

Mr. NELSON. Is the purpose of that to give you a broad field, by means of which you can bring in most anything?

Mr. WISE. No.

Mr. NELSON. What is the purpose of that?

Mr. WISE. The purpose is to obtain the advantage of a fairer rule of evidence. Your National Congress has enacted a great many criminal statutes which relate to commercial affairs. Most of those statutes create a substantive offense; but, in its wisdom, Congress put on the statute books the conspiracy statute, and, as almost every commercial fraud in these days is perpetrated by a number of persons, instead of indicting that number of persons for the substantive offense they are indicted for the conspiracy, and it gives you a more liberal rule of evidence.

Mr. NELSON. It permits you to bring in a great many things you could not bring in otherwise?

Mr. WISE. It permits you to use the rule of evidence applicable to conspiracies, which you could not use if a substantive offense were charged, and nothing more. It permits you to get the guilty people, whereas if you indicted them under the substantive offense you could not reach them, and sometimes it permits you to inflict a deserved punishment where a prosecution under the substantive statute would not, as, for instance, two or three men engage in selling wood alcohol under a misbranded label; if convicted for violating the pure-food law they would get a fine of \$200 at the outside, but an indictment against those men for selling wood alcohol under the representation that it was a wholesome food product, under the conspiracy statute, will permit you to give them at least two years, and that is not enough; and I have done that myself, and been delighted at the opportunity to do it, where I had obtained convincing evidence that I was only getting two years for murder at that.

Mr. NELSON. How many years were you the district attorney here?

Mr. WISE. I was four years as district attorney and four years as the chief assistant to Mr. Stimson and three years as assistant under Gen. Burnett.

Mr. NELSON. When did this practice start? Right after the enactment of that conspiracy statute, or is it of gradual growth?

Mr. WISE. I am like the old lady; you will have to ask somebody older than I am.

Mr. NELSON. That was before your day?

Mr. WISE. Yes, sir.

Mr. NELSON. Have you been interested in this indictment of Congressman Buchanan and others?

Mr. WISE. Nothing in the world, except as an outsider or a citizen.

Mr. NELSON. Have you been in any way active in it? Have you been consulted by Mr. Marshall at all?

Mr. WISE. Not at all.

Mr. NELSON. Have you had any conversation with him about this indictment?

Mr. WISE. Yes; I have since the indictment was returned.

Mr. NELSON. What was the nature of that conversation?

Mr. WISE. Why, my conversation with Mr. Marshall was after the indictment was returned and after it was reported in the papers

that this committee was going to investigate Mr. Marshall; and I went to Mr. Marshall and said, "I will gladly defend you if there is anything on which you want counsel, and you can call on me whenever you want me." He stated to me, in return, that he had nothing to defend himself for and he did not intend to have counsel, and he thanked me for offering my services.

Mr. NELSON. You are very close friends as well as having occupied the same office?

Mr. WISE. Well, if having been to his house once in my life and him at mine once in his life—yes. We have known each other as lawyers at the bar of New York for a period of 15 or 20 years.

Mr. NELSON. Were you consulted in the framing of this indictment against Mr. Buchanan?

Mr. WISE. No; I was not. I think that the United States attorney may have gotten some suggestion for that indictment from me, but not directly.

Mr. NELSON. How?

Mr. WISE. About two or three months ago, when a man named Fay was in the public eye, who was said to have devised some iniquitous scheme of blowing up ships that were laden with cargoes to go to the allies, there was a discussion as to whether or not there was an adequate statute under which he could be punished, and the Tribune asked me to express my opinion on it, and I wrote an article for the Tribune, in which I expressed the opinion that if two or more persons conspired to obstruct the flow of commerce they could be reached under the Sherman law, and that is my opinion now.

Mr. NELSON. In other words, you were probably the father of the idea?

Mr. WISE. I do not think so. Richard Olney was the father of the idea in 1894, when he indicted Debs and his crowd of people out in Chicago for interfering with the mails and the commerce of the United States in the famous Pullman strikes.

Mr. NELSON. I want to say as legislators we are interested in seeing to what uses the statutes can be applied.

Mr. WISE. Sometimes you do better than you even think.

Mr. CARLIN. Mr. Wise, I want to ask you for some information. Is it the practice in Federal courts in New York to swear grand jurors to secrecy?

Mr. WISE. I think it is. There is a stock form of oath that has been administered here, time out of mind, and I think that it absolutely prohibits, and it certainly has in the 14 years of my active knowledge of the office been the paramount idea that no one could disclose anything that transpired in that grand-jury room, and these courts have constantly refused to allow any disclosure either by a witness, a juror, or an attorney who has been before it.

Mr. CARLIN. Do you know whether that oath is administered as a result of a statute?

Mr. WISE. I do not think it is. I think it is an oath that comes down from the common law and was incorporated into the practice of these courts. You know there is no statute regulating criminal procedure in the Federal courts. We adopt the common law and sometimes we grope around a good deal in trying to fix our finger

on what the common law is, but that oath has been administered here since before you and I were born.

Mr. CARLIN. What statutory authority is there for taking stenographic notes of the proceedings before the grand jury?

Mr. WISE. What statutory authority?

Mr. CARLIN. Yes.

Mr. WISE. I have never heard of any, but there is an authority—a decision of the circuit courts of appeal—the second circuit—in the case of United States against Wilson, and a decision by Judge Addison Brown 20 years ago in the United States District Court.

Mr. CARLIN. I am not familiar with those decisions. What did they hold?

Mr. WISE. They practically hold that he is a part of the furniture of the grand jury; that he is the amanuensis of the district attorney and that the district attorney uses him for preserving notes of what the witnesses have testified to.

Mr. CARLIN. Now, is it a common practice for either the district attorney or his assistants to sum up the evidence before a grand jury where an indictment is pending?

Mr. WISE. No; unless the grand jury should request them to do it, and then it is not in the nature of a harangue, but merely a résumé. A matter may be before the grand jury for a period of a month. The grand jury sits for a month—used to sit for two months. Witnesses may be called on Monday of this week in a certain matter and no more for another week, and in between the time of calling those witnesses maybe a dozen other cases heard, and at the end, when the grand jury is going to vote upon whether or not to return a bill, their memory is hazy and it is all mixed up with these other cases they have heard, and just for that reason I noticed here to-day you would not call any other witnesses until you had heard everybody who had testified in one particular matter. Well, in grand jury proceedings you can not always do that, and the jurors may ask the district attorney to rehash what has been said by the witnesses who have been there.

Mr. CARLIN. It is also the custom for an assistant district attorney to be present in the grand jury room all the time while evidence is being taken by the grand jury.

Mr. WISE. Oh, yes. In a large community like this the grand jury can only be an auditory body. It can not conduct the investigation itself. The district attorney calls the witnesses and examines them. If the jurors were to do it it would be a muddle and an interminable performance, and the only time the assistant district attorney leaves the room, and that he must do, is if the jury is in debate on a proposition involving their decision; then he leaves the room.

Mr. CARLIN. What would you have done with a subordinate of yours, if you were district attorney, who would present an indictment to the court that had never been voted on by the grand jury at all and make that admission in court?

Mr. WISE. I think I would have to have a few more facts. If he was a very young and inexperienced man, I would give him a lecture on what the duties of an assistant district attorney were and see that it never occurred again. If a second offense, he would get kicked out of the office. If he was an older man, a man of more discretion, I think he would get a pretty severe reprimand.

Mr. CARLIN. You would not consider it exactly in keeping with the ethics of the office for an indictment to be changed after it was found, would you?

Mr. WISE. It is a contempt of court.

Mr. CARLIN. I am speaking of the conduct of the office itself.

Mr. WISE. Let me ask you, Mr. Chairman, do you mean after the indictment has been filed in the clerk's office?

Mr. CARLIN. Yes.

Mr. WISE. The man that does that ought to be put in jail.

Mr. CARLIN. In the case in mind, I am not sure the testimony showed after it was filed in the clerk's office, but it was after it was found by the grand jury and returned to the district attorney's office that the language of the indictment was changed, and that was admitted in court, on a motion to quash.

Mr. WISE. I do not know what anybody is thinking about in doing such a thing as that, but as a matter of fact, probably the grand jury never read either one of the indictments. They found an indictment, leaving it to the district attorney to put it in the proper form to charge the offense which they broadly had in mind, if they were not discriminating, and they don't undertake to discriminate. A district attorney's assistant goes before the grand jury and he says, "Gentlemen, I have a case to present to you. It is a charge of a violation of section so and so, of such and such a statute, and I will call the witnesses." The statute, for instance, we will say the postal law charges that if a person shall have devised a scheme or artifice to defraud, and for effecting and so on shall put a letter in the mail, he shall be guilty and on conviction be punished. That is all the jury has of the law. Then he calls the witness and when they have heard the witness he says, "Now, I will retire and you can vote whether there shall or shall not be an indictment," and he goes out and they say, "Bring up the bill." They don't draw the bill. Not once in a hundred times do they read it and they sign what he hands them, and ordinarily I should say he hands them what would be a charge of a violation of the statute in question, by the people in question.

Mr. CARLIN. That is what I want to ask you about, Mr. Wise. I want to get the benefit of your long and remarkable experience in connection with the district attorney's office, and as far as I know and believe efficient and able service that you rendered. While it is true that a great deal of good may be accomplished by bringing an indictment of those who are guilty, by a system that allows the influence of the district attorney's office to invade the grand jury room, is it not likewise true, based upon your experience, that it is practically within the power of the district attorney to indict anybody he pleases?

Mr. WISE. If he can get the witnesses to swear to something; yes, but ordinarily your President and your Senate looks into the character of the men who are entrusted with the position, and satisfy themselves that they are men that can reasonably be relied upon to conduct themselves in conformity with the law. You do get crooks in office.

Mr. CARLIN. The question has to do with the appointment of young and inexperienced and enthusiastic subordinates of the district attorney, who had charge of the grand jury room.

Mr. WISE. Yes.

Mr. CARLIN. And have charge of nine-tenths, if not a greater percentage of the indictments that are found.

Mr. WISE. Yes.

Mr. CARLIN. So the responsibility, after all, is handed down the line, and it may get to a young and enthusiastic fellow, who, to use your own language, sometimes thoughtlessly does an indiscreet thing?

Mr. WISE. Yes.

Mr. CARLIN. But I am discussing the power and the opportunity of the office itself to indict people with practically no testimony. Now, in the case here under investigation, or one of the cases, it turned out there were a number of men connected with the labor peace council as officers. There were some men outside of the labor peace council who were thought to be connected with foreign Governments, trying to make trouble in industrial operations in this country. When the indictment was found, according to the testimony of the grand jurors themselves, a bunch of names was handed to them by the assistant district attorney, and the bunch was indicted. It turned out afterwards that some of the officers of the national peace council were in the bunch, and some of them, more important officers, were not in the bunch. Does not that convey to your mind the idea that there seems to be a power to indict in a great city like this—it is no longer the grand jury's power, but seems to be that of the district attorney?

Mr. WISE. Well, that is partly so, but it is so wherever power must be entrusted. It is in your power, in the power of the Congress of the United States to destroy all of the business of the United States, if it acts recklessly or carelessly. It is in the power of the man who is driving the automobile to kill passengers in the street, and every now and then some such thing happens. I am not referring to Congress now, but the latter instance.

Mr. CARLIN. I am trying to get from you, based on your experience, whether, after all, the function of a grand jury has not been practically eliminated and destroyed?

Mr. WISE. Well, sir, I don't think a grand jury is worth a 2-cent piece, if you want my opinion on the subject. I think that if the United States attorney had the power to return, and he can not do it, because you have got a Constitution that you can not abandon in that respect—

Mr. NELSON. We can, in many States, and do get rid of it.

Mr. WISE. Yes, sir; but you can not without an amendment of the Federal Constitution. If the United States attorney had the power to subpoena witnesses and examine them in his own office, and could file information as he has in many States, as in Connecticut, for everything except a capital offense—

Mr. NELSON. And Wisconsin?

Mr. WISE. And it is so in many other States, the results would be just as good, and there would be 23 men down town attending to their business, instead of sitting up here registering practically the will of a district attorney.

Mr. CARLIN. And yet your forefathers and mine had an idea, when they established the grand-jury system, that the body was to stand between that very thing, the power of any one man or a mob itself to have a man charged with a crime, until at least a number of his peers have said there was probable cause of his guilt.

Mr. WISE. Yes.

Mr. CARLIN. You think now that your experience has taught you that the judgment of one man, the district attorney, as to the probable cause of guilt, would be better than the judgment of a grand jury?

Mr. WISE. It is the individual judgment on which the thing is now based, and to show you, in the United States attorney's office out of every five complaints presented—every five complaints made to the district attorney, one was presented to the grand jury. Whenever one was presented to the grand jury, an indictment was found. I have no recollection of an indictment not being returned, and of the indictments returned 95 per cent were convicted, and those five that were not convicted were lucky.

Mr. CARLIN. Your experience has been, Mr. Wise, that whenever the district attorney asks for an indictment, it is returned?

Mr. WISE. He does not ask for it, but he does. Now, that is the honest fact.

Mr. CARLIN. He does not, but he does?

Mr. WISE. Yes; he don't go in there and say "I want you to indict," but he says "You are going to consider a case against A, B, C, and here are the witnesses," and after they all hear the witnesses they say, "Trot out your indictment." That is about the size of it, and he don't abuse his power.

Mr. CARLIN. What do you think of the indictment of persons in a bunch? I am going to be fair, so before you give your opinion you will know what is in my mind. In the indictment found against Lamar, Schulteis, Martin, Buchanan, and others, in that case the testimony before us is that—I think by the foreman of the grand jury—

Mr. NELSON. And by others.

Mr. CARLIN. And by others who were members of the grand jury that the names were handed to them in a bunch; that they found an indictment without adding any name to the number or taking a single name from the number. Having discharged their duty in that way they turned the indictments over to the district attorney. Is that the custom?

Mr. WISE. If those are the facts that the grand jury had, so to speak, it is easy to account for, and being satisfied that the district attorney had better judgment in such matters than they, they accepted what they believed was his view of the case. Just exactly like any body of jurors. Just like any petit jurors: we have to fight them all the time to keep those 12 men from watching that man on the bench and from convicting or acquitting the way they think he thinks.

Mr. CARLIN. In the case of a petit jury you would change your mind then; you do not think the one on the bench—his opinion ought to be taken as against any of the 12, but in the case of the grand jury you think the one man, the district attorney's opinion is better than that of the jury?

Mr. WISE. Yes.

Mr. NELSON. The reason for that, if I may interrupt, is that before the petit jury the other fellow has a chance all the while, but in the grand jury it is ex parte?

Mr. WISE. Yes; if I was a defendant in a criminal offense and was innocent I would rather be tried before the judge. If I was the defendant in a criminal case and was guilty, give me the jury.

Mr. NELSON. And a good lawyer?

Mr. WISE. Yes, sir; juries let the guilty escape, but judges rarely do.

Mr. CARLIN. Then the indictment, such a one as I have described to you, of a number of men in a bunch, eight, I think, in one case here, really means nothing but the registering of the will of the district attorney by the grand jury?

Mr. WISE. Pretty near it. I got an indictment here once against 83, and I had been taking evidence for two months, and I would like to know what man out of the 23 grand jurors down there could have picked out those 83 men to indict them. It was under the Sherman law. There were about 853 names which had been before that jury, and they would have had to sit up there for a year and digest that evidence.

Mr. NELSON. How are their names submitted of those upon which the department expects an indictment?

Mr. WISE. Well, the whole practice of grand jury proceedings was for the district attorney, and this is the practice of a century, to write an indictment charging A. B. with a particular crime and to hand that indictment to the grand jury, and the grand jury calls witnesses and they vote a bill or no bill, and so when the district attorney comes in and hands them that paper showing that A. B. has violated the law, they get a pretty good intimation from him that he believes——

Mr. NELSON. There was no separate list added in or anything like that?

Mr. WISE. No.

Mr. CARLIN. You think the system should be changed in some way?

Mr. WISE. I do not know. For the benefit of the 23 separate men who have to be locked up in an inside room here in this building and listen to a lot of evidence, I would say to you they would be grateful to be relieved and let the district attorney do it himself. I do not think his power would be abused; and I do not think it is now.

Mr. NELSON. Would it be well in a large place like this to divide up?

Mr. WISE. Divide up what?

Mr. NELSON. The duties of a district attorney—have more district attorneys here?

Mr. WISE. No, sir. I am a strict centralist. I believe the whole power concentrated in one head, the more efficiency results.

Mr. GARD. I desire to call your attention to a couple of matters, probably a little more immediate for our consideration. You have said you knew Mr. Wood and you knew Mr. Hershenstein. The committee I do not think knows them. Will you kindly advise us about the respective ages and their experience at the bar?

Mr. WISE. Roger Wood was born in Frederick, Md., and has the distinction of being named for Roger Taney (?). He is a graduate of the University of Virginia and I think has been admitted to the bar of New York for more than 10 years. After Mr. Wilson was elected President and I was still in office I had a vacancy to fill, and

I thought that for the good of the service I ought to put a man in who would stay there, and not stick in a Republican at the tail end, who would not learn his job before he would get kicked out; so I put in this boy, Wood, who was a Democrat, a man of good standing at the bar, and who happened to be, curiously enough, in Mr. Marshall's office in the private practice.

Mr. GARD. About what is his age?

Mr. WISE. About 35 years of age, I think.

Mr. GARD. Been practicing here in New York about 10 years?

Mr. WISE. Yes, sir.

Mr. GARD. Now, tell us about Hershenstein.

Mr. WISE. Hershenstein is a remarkably bright young boy. He is a Russian Jew, born in Odessa; came to this country when he was a boy 10 years of age; and he has made himself. He graduated at the Columbia Law School, and I took him into my office about two years before I went out of office, in one of the very junior positions. He is a most energetic and industrious young man, and a very straight, clean boy, but bursting open with energy and ought to be under some control of an older person.

Mr. GARD. Needs a heavy checkrein?

Mr. WISE. Yes; he goes too free. There is not anything evil in the boy.

Mr. GARD. How long has he been a member of the bar of New York?

Mr. WISE. He had just been admitted to the bar when I took him. I would say three or four years.

Mr. GARD. Practically his whole experience at the bar, then, has been in the office of the district attorney?

Mr. WISE. I think he had had practically a few months, or maybe a year before he came to me.

Mr. GARD. Now, tell me another thing. Probably Mr. Wood ranks among the highest in service and efficiency in the district attorney's office at the present time, does he not?

Mr. WISE. I can not say because I am not—that involves a judgment as to the merits of all the men there, and I have not had any dealings with them.

Mr. GARD. Probably I should not have asked you that in that form, but at any rate, as you said, he and Mr. Hershenstein have survived from your administration down into the present administration?

Mr. WISE. Yes; they were at the bottom of my office and they have gradually come up.

Mr. GARD. Now, is it the rule in the district attorney's office at this time, or during your régime, to allow the assistant district attorneys who were in active work in the office to take private practice?

Mr. WISE. I can not answer for Mr. Marshall. I can answer for myself. When I was there, when I took a man in as an assistant, it was with this limitation: There is no statute against it, and as you probably know, they do not pay United States attorneys in most of the districts enough for them to give up their law practice. Every United States attorney practices law on the outside, provided it does not conflict with his official business. We were crowded with work here and my limitation was "You can practice provided the Government has no interest in the matter under which you are

practicing and provided your practice privately does not interfere with the Federal Government's work, but that has got to be done."

Mr. GARD. Now, I think you have been frank enough.

Mr. WISE. And they did not have much time to do any private practice.

Mr. GARD. Calling your attention to the immediate case which was before us, it is evident from the evidence which we have, at least, that Mr. Wood, an assistant district attorney, appeared in a private capacity in the matter of this film case, in which Bard and Keen were interested?

Mr. WISE. Yes; he had a perfect right to do that.

Mr. GARD. I understand he did, in his private practice.

Mr. WISE. Yes.

Mr. GARD. And that later something occurred which made him relinquish that representation?

Mr. WISE. I know nothing about that.

Mr. GARD. Do you know whether he was succeeded in the representation of this film firm by Mr. Hershenstein?

Mr. WISE. I know that he was not. You mean Hershenstein became the private attorney of a film company?

Mr. GARD. Yes.

Mr. WISE. Absolutely not. I do not know whether Wood was succeeded by anybody in his private retainer there. The Goldsmiths represented some of those manufacturers, as I remember it, Wood represented one of those manufacturers, but whether afterwards the Goldsmiths represented the manufacturers that Wood previously represented, I don't know.

Mr. GARD. Do you know whether Mr. Wood represented the Liberty Film Co.?

Mr. WISE. Without reference to my papers I could not tell you what it was.

Mr. GARD. Do you know Mr. Charles Anderson, who made a complaint against Keen and Bard?

Mr. WISE. Only heard of him. I never saw him.

Mr. GARD. Well, he recites that he is the secretary of the Liberty Film Co. Do you know him?

Mr. WISE. I don't know him. This was all historical when it came to me through Bard and Keen.

Mr. GARD. Were you the attorney who finally closed up the matter of Bard and Keen?

Mr. WISE. I closed it up in Mr. Marshall's office. After that I told Mr. Marshall I wanted the papers back, and he told me that there was a request from the county district attorney's office for the papers, and I said, "Let them go there," and then the matter was taken up in Judge Swann's office, and my associate, Mr. Whitney, has handled the matter over there.

Mr. GARD. Do you know whether the papers and the evidence before the Federal grand jury were turned over to the office of the local district attorney or not—to the county district attorney?

Mr. WISE. I have no personal knowledge of anything in the county district attorney's office regarding this matter.

Mr. GARD. I thought possibly you might have owing to your personal connection to this particular case.

Mr. WISE. Well, it would be hearsay, and Mr. Whitney could answer those questions better than what I can. What I know is second hand from him.

Mr. GARD. It was Mr. Whitney who finally settled the matter personally?

Mr. WISE. If it is finally settled.

Mr. CARLIN. You heard the testimony here of Mr. Keen?

Mr. WISE. Yes, sir.

Mr. CARLIN. He seems to be very strongly of the opinion that the conduct of the district attorney was reprehensible in his case?

Mr. WISE. Yes.

Mr. CARLIN. And, if I gather your testimony correctly, you do not think there was anything reprehensible in the conduct of the office of the district attorney?

Mr. WISE. Of course, bad judgment is always reprehensible, but then we can not be to blame for bad judgment if it is honest bad judgment.

Mr. GARD. I think you went so far to say in this matter that Mr. Wood might have been indiscreet?

Mr. WISE. Yes, sir; and I undertook to explain exactly what I meant by that, by saying that if he had been a man of more mature thought and judgment he would have turned that matter over to his boss and said, "You dispose of this complaint; I have had a relation to it that makes me a poor judge in the case."

Mr. GARD. Is it the practice of this district attorney's office, within your knowledge and observation, to call persons accused of crime themselves before grand juries and have them give testimony?

Mr. WISE. Never happened with my permission or knowledge. I know that some have been.

Mr. GARD. Referring immediately and calling your attention to cases of indictment against Kugel and Feldman, on charge of conspiracy to conceal assets in bankruptcy cases. That, generally speaking, is the nature of the charge?

Mr. WISE. Yes.

Mr. GARD. It is in evidence that Mr. Feldman was called by this district attorney's office to testify in a grand jury and the next day he was indicted.

Mr. WISE. And then he was acquitted, which shows what a fool the district attorney was, because it will happen every time. I would not do it on general principles. If I was going to indict a man, I would never take him before the grand jury, because I would know I would never be able to convict him. Every time you would go before a petit jury they would do the square thing.

Mr. GARD. I am asking if you know whether that is the practice?

Mr. WISE. It is not the practice.

Mr. GARD. There is also testimony here that they took the personal business associate of Mr. Keen, a man by the name of Saxe, several times before the grand jury and started to abstract testimony from him.

Mr. WISE. Well, if they weren't going to indict Saxe, there is no objection to it that I can see, providing they are honestly conducting an investigation with the view to getting an indictment.

Mr. GARD. There is also testimony here that a man by the name of Oppenheimer was indicted seven times, and that none of those

indictments were sufficient, either in form or substance, to have him stand trial, and that he was repeatedly indicted, not for different offenses, but seven times for the same alleged offense.

Mr. WISE. They believed he was guilty and the man who was writing the indictments was a poor pleader. I had to do that with Fritz Augustus Heinze. Three times I came into this court with an indictment and three times the court sustained the demurrer and the fourth time I got one that stuck, but the Supreme Court reinstated all the three that had been knocked out, but I was trying to get him where he belonged.

Mr. GARD. It is in evidence here before this committee that one of the indictments against Mr. Oppenheimer was returned after it had been presented by the foreman of the grand jury, signed by him, and a copy served on the defendant, Oppenheimer: it was changed by some one, so as to include another, or at least an additional form of charge. The indictment first charged something with relation to money. The indictment, after it had been signed by the foreman and a copy served on the defendant, was made to include also the words "chooses in action."

Mr. WISE. You used the words "served on the defendant." This is the only district that I know of where a man charged with crime can find out what the charge is without paying for it. That was adopted under—

Mr. GARD. Well, independently of that.

Mr. WISE (continuing). Mr. Stimson. We gave them a copy of the indictment. In every other district they file the indictments with the clerk, and if you want to see what you are charged with, you have to pay so much a folio.

Mr. GARD. Independently of that I am asking about the propriety of doing that.

Mr. WISE. Did he get a correct copy of the indictment, when you speak of being served with the paper, or did the district attorney give him a copy of an original draft?

Mr. GARD. I apprehend that a true copy was made, because the chairman of the committee suggests that the motion to quash was made for this reason, that it has been incorporated after the return and after the filing, and that by a competent court the motion was sustained. What would you say of a practice like that?

Mr. WISE. It ought not to be done.

Mr. GARD. You would go so far as to say that it is reprehensible, I suspect, purely as a practitioner and one having wide experience, in the administration of criminal law, which, after all, is the administration of justice.

Mr. WISE. If the foreman of the grand jury has written his vise on the bill, no man has a right to change it. As you know and as I know, alterations above a signature are forgery, and the assistant district attorney ought to have gone back and re-presented the matter, with a new paper and asked him to take back the old one and put the new one in its place, and those things are the kind of carelessness that men do fall into every now and then, but those things are the exception and not the rule.

Mr. GARD. Suppose this state of affairs were made known to you—and I am frank to tell you what I am incorporating in questions has

been disclosed to us by some evidence; whether it is conclusive or not, we are not stating, but it is some evidence. This is on the Oppenheimer case again: Suppose the evidence given to us shows that an assistant United States district attorney, having had an indictment against this particular defendant quashed for some reason, calls the grand jury and takes them into the grand jury room, where the foreman signs another indictment without the grand jury having considered it—without there having been a vote taken on it, and without the necessary time elapsing for the grand jurors to even express individual opinions thereon, and that that state of affairs becomes known and is incorporated in a motion to quash, or some pleading directed to the sufficiency of the procedure, and that that pleading is sustained by a court—what do you say about that kind of practice in the United States district attorney's office?

MR. WISE. I say that the court in sustaining the motion to quash has said all that is necessary to be said about it—that it was improper; but I do not think, in the absence of express malice, that you could impute anything more to the assistant who did it, than carelessness; he may have been over-enthusiastic, or trying to cut a corner and save time, when he knew that he could get the indictment in its modified or new form, if he took the time, and he just did not waste the time to do it. That is about the way it looks to me.

MR. GARD. Just take both of these things into consideration in your own mind—I am putting it up to you: Suppose it is made to appear that the same district attorney did both of these things; that after an indictment had been returned, he changed the substance of it so as to include a greater offense, and, in addition to that, that he caused a subsequent indictment to be returned ostensibly fair on its face, but really eminently unfair, because it was never submitted to or considered by a grand jury, and that both those indictments have been quashed by courts which have heard the circumstances and conditions, and which have been fully advised of them; do you think a man like that is a proper assistant in the administration of justice?

MR. WISE. Well, no and yes. That man might be a perfectly honorable and honest man and have been actuated by perfectly proper motives, and what he needs is a dressing down by his superior, and the people who knew of those facts ought to have put it up to his superior, and his manners would have been corrected, or his habits would have been corrected.

MR. GARD. Suppose those matters have been put up to his superior? Calling your attention directly to the cases to which I refer, the evidence which we have relates to the assistant district attorney, Mr. Hershenstein, and I have tried to give to you the evidence as fairly and impartially as it has been submitted to us, and suppose that it had been made known to Mr. Marshall, and Mr. Hershenstein is still in office?

MR. WISE. One swallow does not make a summer, and the district attorney knows the rest of his work, and he knows the man's character, and he has had the opportunity to see him day in and day out, and he may be perfectly satisfied that Hershenstein was not actuated by any improper motive, and that an indiscretion of that sort does not justify getting rid of a man who accomplishes results, and is a capable, faithful assistant.

Mr. GARD. Do you know anything, personally, about the present district attorney's office constituting any one member of its organization a sort of bankruptcy ferret?

Mr. WISE. No; I do not think the district attorney's office has anything to do with what the duties of one or another of the assistants may be. I imagine that the head of the office details his men to handle certain lines of work.

Mr. GARD. Yes. I was wondering whether you had any acquaintance with the question as to whether any particular man in the present force of the district attorney's office had been detailed to work relating to bankruptcy and proceedings growing from bankruptcy cases.

Mr. WISE. Well, in a large organization like that, which has presented to it every day all kinds of business—the Sherman law, railroad rate, immigration, naturalization, pure food, bankruptcy, postal frauds, and a number of cases—the men naturally gravitate into more or less of a specialty, and when an agent of the Internal Revenue Department comes in he will go to Smith, and when a postal employee comes in he will go to Jones, and when a bankrupt comes in he will go to another fellow, because each man handles some particular line, and generally the chief designates him, because of his aptitude in that line. If you do not have specialists in these days, especially with the statutes that you men are passing down there every year, you will have confusion worse confounded.

Mr. GARD. I understand that, but I was asking for your information, whether you had done any such delegating of duty to your assistants?

Mr. WISE. There certainly was when I was there; every man had his specialty, in a way, and then I changed them every now and then to keep them from getting too special.

Mr. GARD. Do you know whether this man Hershenstein has any special designation of particular work in the present office?

Mr. WISE. He has been working mostly in bankruptcy cases, and he has put a lot of them where they belong.

Mr. GARD. He has been the bankruptcy man—has had charge of the bankruptcy cases?

Mr. WISE. I think he has largely, yes; and he has gotten good results; he has gotten some good convictions, and they have been salutary lessons for the community.

Mr. GARD. That is all.

Mr. NELSON. What do you think of this practice: An assistant district attorney in the trial of a case, taking advantage of the minutes, holding them in his hand, and saying, "Did you testify so and so in the grand jury?" Do you think that a proper practice?

Mr. WISE. No; he ought not to do that. That is my opinion.

Mr. NELSON. Yes. In what cases do the courts permit, in your experience, grand jury minutes being produced?

Mr. WISE. Only where a man is prosecuted for perjury before the grand jury.

Mr. NELSON. Is that exception made in the oath that the grand juror takes?

Mr. WISE. That he can not disclose what transpires there?

Mr. NELSON. Excepting in case of perjury?

Mr. WISE. No; there is no reservation in the oath at all.

Mr. NELSON. It seems to me that Judge Mayer, in his testimony, said it was done also in cases where there were constitutional privileges involved. Do you know anything about that?

Mr. WISE. Oh, yes. Where, of course, any question that the grand jury desires instruction from the court arises, they must disclose to the court what has transpired, or sufficient of what has transpired, to have the court see the question that is to be ruled upon by it.

Mr. NELSON. Is that exception made in the oath, as you understand it?

Mr. WISE. No.

Mr. NELSON. How do you justify that in your practice here, of solemnly putting a grand juror under oath and then permitting him to disclose what he has heard?

Mr. WISE. A grand juror is put under oath to true presentment make of all such matters and things as shall come to his attention, and if a witness is contumacious, they a true presentment make of it, and then they are conforming to the oath, and if the witness commits perjury before them the decisions are that they can return an indictment then and there, and that goes back to the days of Hale's Pleas to the Crown.

Mr. CARLIN. Suppose a grand juror, after taking that oath, Mr. Wise, did disclose what happened in the grand jury room?

Mr. WISE. If I were the judge, and he were brought before me, I would commit him for contempt of court.

Mr. CARLIN. You would commit him for contempt of court?

Mr. WISE. Yes.

Mr. CARLIN. There is no authority for the administration of the oath; it is not in violation of any law.

Mr. WISE. You mean the particular form of the oath?

Mr. CARLIN. Yes.

Mr. WISE. There may not be, but where there is not any express term laid down, like the interpretation of the Constitution, we read between the lines.

Mr. CARLIN. Your idea is that he is not violating any law, but simply violating a rule of the court?

Mr. WISE. Yes.

Mr. CARLIN. And, therefore, the only punishment that could be administered to him would be for contempt of court?

Mr. WISE. Yes.

Mr. GARD. There is another matter on which I desire a little information; it is related to procedure. You said that when this question of the indictment of Bard or the continuation of the prosecution of Bard & Keen came up, that it was transferred by Mr. Marshall, the District Attorney, to some one else. I did not understand that.

Mr. WISE. Submitted.

Mr. GARD. Submitted?

Mr. WISE. He made an arbiter; made Mr. Wemple an arbiter to pass upon it.

Mr. GARD. Whom did you say?

Mr. WISE. Mr. Wemple, W-e-m-p-l-e.

Mr. GARD. Was that because Mr. Wood had had some private connection with the matter?

Mr. WISE. Yes. When I went to Mr. Marshall I said, "Here, Wood was the private attorney in this matter, and it has been brought to his attention in his official capacity now. He is in a dual position, where his judgment can not be unbiased. Somebody else ought to pass on this thing, and he ought not to be in that position." Mr. Marshall says, "Well, as long as there is any question, if any reflection could result from such a situation, I would rather have an outsider pass on this than even myself," and he appointed Mr. Wemple as the man to look into all the facts and decide it.

Mr. GARD. Is that a matter of agreement, or is there any authority for the appointment of a so-called arbiter like that?

Mr. WISE. Certainly no legal authority. It was the exercise, it seemed to me, of a sound judgment and discretion by a man in a matter where his personal integrity and the integrity of his office were involved.

Mr. GARD. The idea is to submit it to an outside unprejudiced person?

Mr. WISE. Exactly.

Mr. GARD. Who might be called a "friend of the court."

Mr. WISE. Well, just what an "arbiter" would imply—a man who was free from any affiliation and could give an absolutely unbiased judgment.

Mr. GARD. To so advise the executive officer?

Mr. WISE. Yes, sir.

Mr. CARLIN. I want to ask you about your statement with reference to contempt of court. You said you would hold a grand juror in contempt of court, if you were the judge. Contempt, as I understand it, must be for violation of some order of the court.

Mr. WISE. Yes.

Mr. CARLIN. Now, you have not stated that this oath is given by order of the court; it just comes along down as a matter of habit and custom.

Mr. WISE. It is an oath administered in the court.

Mr. CARLIN. Yes; but to be in contempt of court a man must either do or abstain from doing something that he is ordered to do by the court itself, and I do not understand from you that this oath is administered by order of the court.

Mr. WISE. It is administered, if I am not mistaken, by statute.

Mr. CARLIN. That is what I was trying to get at.

Mr. WISE. I said the form of the oath. I do not know whether any form of oath is prescribed by statute.

Mr. CARLIN. Do you know of any statute, because it was my purpose to ask you if there was any statute that prescribes the character of oath to be administered?

Mr. WISE. I have an indistinct recollection of it. It is one of those things that we go along accepting as so without undertaking to verify, but my impression is that there is a statute prescribing the oath of office to a grand juror.

Mr. CARLIN. Of course, if that be a statute, it would prescribe a penalty for violating it, I suppose?

Mr. WISE. Yes, sir.

Mr. CARLIN. If you should run across any such statute, I would be glad to have you bring it to the attention of the committee.

Mr. WISE. I will. I will be glad to.

Mr. CARLIN. The committee has covered a vast range in interrogating you to-day, and has done so for its own information, and we have received a great deal of information from you, and we are very much indebted to you for coming here to testify.

Mr. WISE. Any time you want me I will be glad to come. I do entertain the slightly vain idea that perhaps I know as much about the practice of this district as any other man around here.

Mr. CARLIN. You ought to, at least.

Mr. Clerk, call the names of the other witnesses now present and tell them that they may go now, but to be here to-morrow morning at 10.30.

(Thereupon Mr. Russell, the clerk of the subcommittee, called aloud the following names: Harry Siegel, Charles Anderson, Carl E. Whitney, Louis Berger.)

(After informal discussion, the committee decided to take at this time the testimony of Mr. Carl E. Whitney.)

TESTIMONY OF CARL E. WHITNEY.

(The witness was duly sworn by Mr. Carlin.)

Mr. CARLIN. Mr. Walsh, Mr. Whitney was summoned here, I think, at your request. If you have any questions to ask him we will be glad if you will do so.

Mr. GARD. Mr. Whitney says he has some very serious illness in his home, and he would appreciate it if he could be examined to-day.

Mr. WHITNEY. So that I could be free to-morrow.

Mr. GARD. You probably know more, Mr. Walsh, as to what questions should be propounded to him, and we will ask you to examine him.

Mr. WALSH. The reason Mr. Whitney was subpoenaed, I understood, was to testify concerning this Keen & Bard case, along the lines Mr. Wise has given testimony here.

Mr. GARD. He has gone into it very fully, apparently.

Mr. WALSH. It would seem so.

Mr. CARLIN. Are you satisfied, then, to excuse Mr. Whitney?

Mr. WALSH. If the committee see fit, yes.

Mr. CARLIN. I will ask you one question, Mr. Whitney, as to the minutes taken before the grand jury, when an indictment was pending here; have you any information as to whether those minutes were turned over to the district attorney for the State or the county attorney, as he is called?

Mr. WHITNEY. You mean personal knowledge, Mr. Chairman?

Mr. GARD. In the Bard-Keen case.

Mr. WHITNEY. Personal knowledge on my part?

Mr. CARLIN. Or any other kind of knowledge. If you have the information, let us have it.

Mr. WHITNEY. My belief is that they were. I have not any information upon which I could state that they had been or had not been.

Mr. CARLIN. Upon what information do you base your belief?

Mr. WHITNEY. From a remark made by one of the assistant district attorneys in the county district attorney's office to another assistant district attorney in my presence, that that man who made the remark either had those minutes or had seen them.

Mr. CARLIN. And that was not a Federal official, but a State official?

Mr. WHITNEY. A State official; oh, yes, sir.

Mr. CARLIN. What is his name?

Mr. WHITNEY. Mr. Brogan.

Mr. CARLIN. Mr. Whitney, you all have agreed upon a settlement of the Keen case?

Mr. WHITNEY. I would not want to put it that way, Mr. Chairman. that we had agreed upon a settlement of a criminal case.

Mr. CARLIN. That is the way your client put it; he said that an agreement had been reached that if he would return or restore this property, that he would not be prosecuted. Is that the fact?

Mr. WHITNEY. Well, that is the layman's way of putting it, perhaps.

Mr. CARLIN. Now, give us the lawyer's way of putting it.

Mr. WHITNEY. I would say that you can not agree to settle a criminal case; that we were asked to return this property, and from the outset had taken the position that we would be glad to return it to the parties to whom it belonged; that our clients made no claim to it whatsoever. That I put verbally and in writing before the district attorney. I was told that if this property were returned, that the gentlemen who were making the complaint would then have no further complaint to make, and, no further complaint having been made, the case would fall.

Mr. CARLIN. The complaint has already been made, has it not?

Mr. WHITNEY. I do not know that one was ever formally made in writing and sworn to in the county district attorney's office. I do not think there was. I think it was a matter which they had under investigation. I do not think there was a sworn complaint there, sir.

Mr. CARLIN. That is all.

Mr. WALSH. Mr. Whitney, was this decision of Mr. Wemple's in writing? Did he hand down a written memorandum?

Mr. WHITNEY. No; he told me.

Mr. WALSH. His decision, then, was oral, was it?

Mr. WHITNEY. Yes.

Mr. WALSH. That he found nothing criminal in the conduct of your clients?

Mr. WHITNEY. He so stated to me.

Mr. WALSH. Did you personally handle this matter with the United States district attorney's office?

Mr. WHITNEY. Well, I was associated with Mr. Wise in connection with it; yes, sir.

Mr. WALSH. Who did the conferring with the United States district attorney's office—you or Mr. Wise?

Mr. WHITNEY. Both of us.

Mr. WALSH. You both did?

Mr. WHITNEY. Yes.

Mr. WALSH. And the matter was taken up at all times with Mr. Marshall directly?

Mr. WHITNEY. No, sir.

Mr. WALSH. With whom then?

Mr. WHITNEY. I took it up both with Mr. Hershenstein and with Mr. Wood, very briefly.

Mr. WALSH. What sort of a hearing did you have, if you had any, before this Mr. Wemple, the referee?

Mr. WHITNEY. We had no hearing, in the sense of having witnesses.

Mr. WALSH. You merely stated your claim?

Mr. WHITNEY. Yes; and agreed to produce the clients if he cared to see them. It was more or less a question of law, Mr. Walsh.

Mr. WALSH. More a question of law?

Mr. WHITNEY. Yes; as applied to the facts furnished to Mr. Wemple by the United States attorney's office.

Mr. WALSH. Then, do I understand that you made your claims to Mr. Wemple orally, and the United States district attorney's office made their claims to him orally?

Mr. WHITNEY. I understood that they had. I was not present when they did it.

Mr. WALSH. That proceeding was somewhat unusual, was it not?

Mr. WHITNEY. Very; yes, sir.

Mr. WALSH. You do not know of any other case where such a proceeding as that was had?

Mr. WHITNEY. I never heard of one.

Mr. WALSH. At all times, from the very start, it was the contention of you and Mr. Wise that this matter was a civil matter and not a criminal matter?

Mr. WHITNEY. It was; yes.

Mr. GARD. Did you take the matter up with Mr. Wood?

Mr. WHITNEY. Yes, sir.

Mr. GARD. Wood had represented this company in a civil way?

Mr. WHITNEY. The Pikes Peak Film Co.; I think it was.

Mr. NELSON. How?

Mr. WHITNEY. The Pikes Peak Film Co. or Pikes Peak Photo-Film Co.

Mr. GARD. He represented them in a private capacity in some sort of civil litigation?

Mr. WHITNEY. He told me that he had; yes, sir.

Mr. GARD. Pertaining to the same property?

Mr. WHITNEY. The same class of property.

Mr. GARD. The same class of property?

Mr. WHITNEY. Yes, sir; he told me so.

Mr. GARD. And was he the assistant district attorney when you discussed it with him on a question of civil liability?

Mr. WHITNEY. I never discussed that civil liability with Mr. Wood.

Mr. GARD. You did not?

Mr. WHITNEY. No, sir; just the criminal end.

Mr. GARD. Your only discussion with Wood was on the criminal end?

Mr. WHITNEY. Yes.

Mr. GARD. But you did know he had been the attorney, in his private capacity, of this film company that you have named?

Mr. WHITNEY. He told me so; yes, sir; I had heard it before.

Mr. GARD. Was Mr. Hershenstein also attorney for this film company, too?

Mr. WHITNEY. I do not think so; not that I ever heard.

Mr. WALSH. Mr. Whitney, I just wanted to ask you one question: Where does Mr. Wemple live? Can you give us his office address?

Mr. WHITNEY. Yes; his name is William L. Wemple, and I think his office address is 30 Broad Street, and I think his house is on Seventy-eighth Street. Now, those are just my impressions; it is in the telephone book.

Mr. NELSON. What was the procedure before Mr. Wemple?

Mr. WHITNEY. Before Mr. Wemple talked with me he had evidently seen and talked with Mr. Marshall and Mr. Hershenstein—either one or both—because he was familiar with the facts of the case, from the Government's standpoint.

Mr. NELSON. And the procedure was that he took it under his hat and, after thinking it over, why, he announced his decision: is that it?

Mr. WHITNEY. I think he made a rather careful investigation, sir.

Mr. NELSON. In what way?

Mr. WHITNEY. Why, having the Government's side of the case presented to him, so that he had in his mind the facts from the Government's standpoint, and he heard from us the facts from our standpoint, and also the question of law.

Mr. NELSON. That is, in private conversation?

Mr. WHITNEY. Oh, yes; private.

Mr. NELSON. Not when you were together, in any formal way?

Mr. WHITNEY. Very informal, sir.

Mr. CARLIN. The committee will excuse you now, Mr. Whitney.

Mr. WHITNEY. Thank you; you may call me again if you need me later on.

Mr. CARLIN. We will meet to-morrow morning at half past 10 o'clock.

(Whereupon, at 4.05 o'clock p. m., the subcommittee adjourned until to-morrow, Thursday, March 2, 1916, at 10.30 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
New York, Thursday, March 2, 1916.

The subcommittee met at 10.30 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding). Hon. Warren Gard, and Hon. John M. Nelson. Hon. Frank Buchanan and Walter J. Walsh, as counsel.

Mr. CARLIN. The committee will come to order. The clerk will call the names of the witnesses who are subpoenaed for to-day.

(Mr. Russell, the clerk of the subcommittee, thereupon called aloud the following names: Harry Siegel, Charles Anderson, Louis Berger, Edward Swann, Roger B. Wood, Raymond H. Sarfaty, and Marie Doran.)

Mr. CARLIN. Swear Mr. Sarfaty.

TESTIMONY OF RAYMOND H. SARFATY.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Sarfaty, will you please give the stenographer your name and profession and present occupation?

Mr. SARFATY. My name, Raymond H. Sarfaty; profession, attorney at law; my present occupation, assistant United States attorney for the southern district of New York.

Mr. CARLIN. Mr. Sarfaty, how long have you been connected with the district attorney's office?

Mr. SARFATY. Since November, two years ago; November 1, two years ago; 1913, I believe.

Mr. CARLIN. Among the duties which you discharge, is one of them to look after the grand juries while in session?

Mr. SARFATY. Among my other duties; yes, sir.

Mr. CARLIN. Did you have charge of what was known as the September grand jury?

Mr. SARFATY. Not charge of that grand jury; no; I presented cases before it.

Mr. CARLIN. Did you present the case against Lamar, Schulteis, Martin, Buchanan, and others for conspiracy?

Mr. SARFATY. To the September grand jury; yes, sir.

Mr. CARLIN. What was the name of the stenographer to that grand jury?

Mr. SARFATY. It was taken in part by Mr. Roy Schoonmaker and in part by Mr. John Manley.

Mr. CARLIN. Mr. Clerk, will you take those two names and issue subpoenas for them? Are they in the building?

Mr. SARFATY. Their office is here in the building. I do not know where they are at the present moment.

Mr. CARLIN. Do you remember the names of the witnesses that were called in that particular case, Mr. Sarfaty?

Mr. SARFATY. I could not remember the names offhand; I might remember a great many of them.

Mr. CARLIN. Let me ask you this question: Have you had any conference with anybody with reference to what you should testify to before this committee or what you should not?

Mr. SARFATY. I would rather put it the other way; I have had a conference with respect to what I should not testify to.

Mr. CARLIN. With whom did you have that conference?

Mr. SARFATY. With Mr. Marshall.

Mr. CARLIN. What did he tell you you should not testify to?

Mr. SARFATY. I have been instructed by Mr. Marshall, who stated that he was speaking for the Attorney General and for himself, that I should not disclose any matters which were presented in the proceedings before the grand jury in this matter. There was some further conversation—the reason why, etc., if you want me to give them.

Mr. CARLIN. Not just now. He advised you that if the committee asked you questions with reference to what occurred in the grand-jury room that you should decline to answer?

Mr. SARFATY. That I was to respectfully decline to answer; yes, sir.

Mr. CARLIN. Now, Mr. Sarfaty, did you sum up the case for the Government before the grand jury?

Mr. SARFATY. I must respectfully decline to answer that question.

Mr. CARLIN. You decline to answer that? Give us the names of as many of the witnesses as you can remember summoned before that grand jury.

Mr. SARFATY. I must respectfully decline to do that, sir.

Mr. CARLIN. What were your duties before that grand jury?

Mr. SARFATY. I must respectfully decline to answer that question, except I will state that I was acting as an assistant United States attorney.

Mr. CARLIN. When did the grand jury begin the investigation of that case?

Mr. SARFATY. I could not give an exact date: some time in September, 1915.

Mr. CARLIN. Do you remember the date when the indictment was found?

Mr. SARFATY. That is a matter of record. I could only tell approximately. I believe it was a few days after Christmas; I believe it was Christmas week—between December 25 and 30 some time; but when you say “found,” I understand it to mean “returned into court.”

Mr. CARLIN. Yes; signed by the foreman of the grand jury, is what I meant: the date it was voted on and signed by the foreman of the grand jury?

Mr. SARFATY. It was some time in that week.

Mr. CARLIN. Was any argument made by either yourself or the district attorney before that grand jury?

Mr. SARFATY. I must respectfully decline to answer, sir.

Mr. CARLIN. Was an investigation made of these parties by the detective department of the district attorney's office?

Mr. SARFATY. Do you mean of this particular case, was any work done by the Bureau of Investigation, sir? It was.

Mr. CARLIN. I mean by the detective force.

Mr. SARFATY. That is the Bureau of Investigation of the Department of Justice.

Mr. CARLIN. Who were the detectives that were assigned to this work; do you know?

Mr. SARFATY. There must have been eight or nine that did different things in the case. I could not tell their names offhand.

Mr. CARLIN. Do you know the names of any of them?

Mr. SARFATY. That could probably be better found from Mr. O'flly, in charge. I could only make a guess at it.

Mr. CARLIN. Was any private firm engaged in this work?

Mr. SARFATY. For the Government? Not so far as I know.

Mr. CARLIN. Mr. Sarfaty, in finding indictments generally before the grand jury, describe to the committee the system in force here.

Mr. SARFATY. I must decline to state any of the proceedings before the grand jury in the matter, for the same reasons I have enumerated.

Mr. GARD. I am interested very much in your last answer. I do not know whether you correctly understood the question or its purport. The question the chairman asked you, as I understood it, was to describe to us briefly the form of procedure and practice in relation to grand juries in the southern district of New York.

Mr. SARFATY. As I understood, it was presenting cases to grand juries; the method of presenting a case to a grand jury.

Mr. GARD. Possibly that might be included in it, but the question was as to the procedure with relation to cases before grand juries.

Mr. SARFATY. How an indictment is found, in other words?

Mr. GARD. What your procedure is.

Mr. SARFATY. The procedure—

Mr. GARD (interposing). So that we may thoroughly understand one another; you know, of course, that certain charges were preferred in the House of Representatives by Congressman Buchanan?

Mr. SARFATY. So I understand.

Mr. GARD. And for your information I will state that there were two charges which specifically charged Mr. Marshall, in his official capacity and as responsible for assistants under him, with returning indictments, or having indictments returned in grand juries without evidence being presented, and with returning indictments oppressively, and, again, without having evidence presented—I can not refer to it except in general terms, but probably each charge comprehends that general statement. Now, so that you may be advised on it, the question that Mr. Carlin asked you was to describe to us, to this investigating committee—and you may be sure that the committee is entirely impartial and is seeking only information—to describe to us what the procedure or the present practice of the United States district attorney in the southern district of New York is with respect to cases—

Mr. SARFATY (interposing). I see. I understand the question a great deal better than I did at first. The grand jury is composed of a foreman and 22 other members. There is no settled form of procedure, so far as I know. In some cases complaints are made and presented to the commissioner first, and the commissioner holds for the grand jury, and then the matter is presented to the grand jury; in other cases, the man waives hearing before the commissioner and is held for the grand jury, and the matter is presented there and a true bill is voted or not voted, as the evidence justifies or fails to justify a bill; in other cases, the matter is presented immediately to the grand jury in the same general way and is there determined.

Mr. GARD. Have you finished your general statement?

Mr. SARFATY. I think I have, sir.

Mr. GARD. Tell me whether or not it is the practice in the southern district of New York for blank subpoenas requiring the presence of witnesses before grand juries, to be issued by the clerk of the United States court, signed with his name, with the rest of the subpoena in blank, and given to the United States district attorney?

Mr. SARFATY. I believe on some occasions that has been done. The clerk is the one who has charge of that matter.

Mr. GARD. Yes; I am just inquiring into the matter of the practice.

Mr. SARFATY. Yes; I believe that has been done.

Mr. GARD. Is that done uniformly?

Mr. SARFATY. I could not say as to that; I do not know how long it has been done.

Mr. GARD. You have had charge of examinations before grand juries; at least, so it is in evidence. What has been your practice as to the method of procedure you used to cause attendance before the grand juries?

Mr. SARFATY. On some occasions I have had subpoenas issued for them; on other occasions I have requested witnesses verbally to attend; on other occasions I have sent what it known as a form of request for witnesses to attend. That varies, according to the witness.

Mr. GARD. Have you ever used the process of the so-called blank subpoena?

Mr. SARFATY. Well, I have nothing to do with that. I merely send the names that I want subpoenaed to the clerk, who takes care of it.

Mr. GARD. That is, the clerk of the court or a clerk in your office?

Mr. SARFATY. No; the clerk of our criminal branch.

Mr. GARD. Another thing I wish to inquire about: We have heard some testimony to the effect that instead of using the subpoena as a process, there were certain tickets attached to a general subpoena. Do you know anything about that?

Mr. SARFATY. I do know of cases where one subpoena has been used for several persons with several tickets.

Mr. GARD. Yes. I would like to understand about that. It was told to us that there was a general subpoena, and attached to the subpoena were what the witness called "tickets," and those tickets were served on the person whose attendance was requested. I am uninformed of the practice and, therefore, I ask you about that.

Mr. SARFATY. I might best illustrate it by taking this form of subpoena that has been served on me. The original subpoena may have the names of several witnesses on it, all called for the same time in the same case, and then separate tickets or cards would be prepared for each witness, which would be delivered to him, so that there would be one subpoena and several tickets, perhaps, in a great many instances.

Mr. GARD. Who is clerk of the criminal branch of the court?

Mr. SARFATY. Jeremiah Bonner.

Mr. GARD. Jeremiah Bonner. How long has he been clerk of the criminal branch?

Mr. SARFATY. Between 20 and 25 years; some time like. I do not know exactly. Long before my time.

Mr. GARD. Now, I understand you to state in your previous examination that you have had a conference with the district attorney in which the matter has been taken up as to such things that you would not testify to because of your confidential relations with the grand jury?

Mr. SARFATY. That is correct.

Mr. GARD. Coming immediately to this case, were you the prosecuting attorney who had charge of the presentation of the evidence or the presentation of the case, rather, which had its completed form, in so far as the charge is concerned, in the indictment against von Rintelen, Lamar, Schulteis, Martin, Buchanan, Fowler, Monnett, and others?

Mr. SARFATY. I did have charge, in conjunction with Mr. Marshall and under his direction.

Mr. GARD. Did Mr. Marshall also appear in the matter of the examination of witnesses in this case before the grand jury for the southern district of New York?

Mr. SARFATY. I believe he did.

Mr. GARD. You say you "believe he did"?

Mr. SARFATY. Yes. When I say "I believe he did," I am uncertain whether he asked questions. I believe he did ask questions. He was in attendance; that is the only reason I said that I believed he did. It is my best recollection that he did ask certain questions.

Mr. GARD. How often was he in attendance during the consideration of this case?

Mr. SARFATY. I should say not over three or four times; I may be mistaken; it took a long time to present, but a very few times.

Mr. GARD. Was there anyone else besides you who had charge of the consideration and presentation of the case to the grand jurors, and Mr. Marshall—any other prosecuting officer, I mean?

Mr. SARFATY. No; no one else.

Mr. GARD. The matter was in your charge, under the direct supervision of Mr. Marshall?

Mr. SARFATY. That is correct, sir.

Mr. GARD. The committee would like to know whether evidence was produced to the grand jury in the matter of this charge of conspiracy, particularly against Mr. Buchanan?

Mr. SARFATY. I must decline to answer that question.

Mr. GARD. I understand your position. I am again advising you that the nature of the charge is that Mr. Buchanan says that there was no evidence presented, and I am now asking you whether or not there was evidence presented to the grand jury?

Mr. SARFATY. And I must respectfully continue to decline to answer.

Mr. GARD. I understand your position.

Mr. SARFATY. Thank you, sir.

Mr. CARLIN. You would not permit a grand jury to return an indictment unless there was evidence, would you?

Mr. SARFATY. I would not; no; that is, it is a matter, primarily, for the grand jury; but I would not present a case or continue a case unless there was evidence against the defendants, as a general proposition.

Mr. CARLIN. Are you sworn to secrecy before you go into the grand-jury room?

Mr. SARFATY. I do not recall the form of oath. I took an oath of office, but I do not remember its form.

Mr. CARLIN. The oath of office is one thing; but I am speaking of an oath in the grand jury room.

Mr. SARFATY. I do not recall ever taking any oath, as distinguished from the oath of office I took, and I do not recall the exact form of that oath.

Mr. CARLIN. You require grand jurors to take an oath of secrecy before they begin their labors in the consideration of matters presented to them?

Mr. SARFATY. I must decline to answer that question.

Mr. CARLIN. You decline to answer that? That is an oath taken in court, is it not?

Mr. SARFATY. There is no such oath taken in open court.

Mr. NELSON. Where is the oath taken?

Mr. SARFATY. I must decline to testify whether there is any such oath taken in the session of the grand jury or not.

Mr. NELSON. Is there any such oath taken outside of the grand jury room?

Mr. SARFATY. There is no such oath taken outside of the grand jury room.

Mr. GARD. I think I can clarify this matter. Is not the matter of secrecy of the grand jurors a thing which is charged in open hearing by the court?

Mr. SARFATY. They are charged by the court that they must keep their proceedings secret; yes, sir.

Mr. GARD. Until called upon in a court of competent jurisdiction to make disclosure?

Mr. SARFATY. I do not think that that statement is put in there, but they must understand that. They are instructed, generally, that the proceedings are secret, and that they must not divulge the evidence.

Mr. GARD. There is no separate or specific form of secrecy in the oath which the grand jurors take, and I am referring to just the general procedure now.

Mr. SARFATY. The form of oath is a very lengthy one, and I have heard it a great many times, but there is no oath as to secrecy.

Mr. GARD. The form is that the oath is administered to the foreman and then to the other jurors?

Mr. SARFATY. That is correct, sir.

Mr. GARD. I am requested by the chairman of the committee to ask if the oath which the grand jurors take—which probably the foreman takes in specific terms and the grand jurors, the others, take by adoption—is not a matter of statute; if it is not prescribed in the statute?

Mr. SARFATY. I do not recall ever having seen such a statute, but Mr. Leary, the clerk—

Mr. GARD (interposing). It is a matter that never has been called to your attention?

Mr. SARFATY. No; it has never been called to my attention.

Mr. GARD. Have you been in attendance at any time when the grand jurors have been charged?

Mr. SARFATY. On a number of occasions, sir.

Mr. GARD. And you do not recall now exactly what that charge is, with relation to the oath which they take?

Mr. SARFATY. I do recall the charge, as distinct from the oath, on practically every occasion I recall has contained a statement that they must keep their proceedings secret, but I do not recall now that the oath itself contains such a statement.

Mr. GARD. Referring again to this particular case, and having advised you again that Representative Buchanan has charged that this office of the United States district attorney—and when I say "office," I presume that you, as the assistant, are acting in all cases under the direction and supervision of Mr. Marshall, who is the district attorney—it has been charged that indictments were returned without evidence of grand juries, at the direction of Mr. Marshall, and calling your attention to that, I now ask you whether or not there was evidence presented to the grand jury in the case of the United States prosecution against von Rintelen, and, particularly, against Buchanan?

Mr. SARFATY. I must decline respectfully to answer that question.

Mr. GARD. It is your idea, under the instructions you have received or the conference you had with the district attorney, to respectfully decline to answer that question?

Mr. SARFATY. That is correct, sir. It may be that I am mistaken, but that is what I understood my instruction to be.

Mr. GARD. Well, that is entirely for you to determine. I would not suggest whether you are mistaken or not, because I have no knowledge of the conference and could not tell you anything about that.

Mr. SARFATY. I must respectfully continue to decline to answer any of those questions.

Mr. GARD. The committee would like to know whether, in any case, an indictment has been returned by the grand jury for the southern district of New York during the time Mr. Marshall has been United States district attorney without any evidence being presented to the grand jury.

Mr. SARFATY. Not so far as I have ever heard.

Mr. GARD. When did the grand jury for the September term take up for consideration the cases which resulted in the indictment of defendants, among whom was Representative Buchanan?

Mr. SARFATY. I should say, some time between the 15th and 20th of September; that is as near as I recall now; 1915.

Mr. GARD. How long did the investigation continue?

Mr. SARFATY. Down to the date of the finding of the indictment, which would be between the 25th and 30th of December, 1915.

Mr. GARD. Was the indictment determined upon before the day of its filing with the clerk or with the court?

Mr. SARFATY. And when you say "determined," sir, do you mean voted upon by the grand jury?

Mr. GARD. Yes.

Mr. SARFATY. I could not tell you offhand; my impression is, and my best belief is that it was not.

Mr. GARD. When the grand jury returned indictments or when it arose, how many indictments did it return—this so-called September grand jury?

Mr. SARFATY. Do you mean during its entire term, or on the last day of December?

Mr. GARD. At the time of its rising, when it was finally discharged, how many indictments—or did it return any indictments at that time?

Mr. SARFATY. It returned one indictment so far as I recall.

Mr. GARD. What indictment was that?

Mr. SARFATY. And that was the one under discussion here.

Mr. GARD. That is the indictment including those seven, eight, or nine different men whom I have mentioned?

Mr. SARFATY. That is correct, sir.

Mr. GARD. All the other indictments that were returned, had been returned quite a long time before that, had they not?

Mr. SARFATY. They had been returned with more or less frequency during the entire sitting of the grand jury.

Mr. GARD. After the grand jury began the investigation of this—I will call it the "Von Rintelin case," because, I suspect, his is the first name mentioned in the indictment—

Mr. SARFATY (interposing). I think that is correct, sir.

Mr. GARD. But after the grand jury began the investigation of the Von Rintelin case, was there any interruption by consideration of any other charge against any other person or persons, outside of this charge?

Mr. SARFATY. All the matters related to this particular subject matter, but there were other charges considered.

Mr. GARD. Do you mean other charges against these same men, or other charges against other men?

Mr. SARFATY. I must respectfully decline to be more specific. I state that it did involve the same subject matter.

Mr. GARD. The investigation related to the same subject matter?

Mr. SARFATY. Yes, sir.

Mr. GARD. There was no interruption by the grand jury along the line of the examination or investigation of any matter of a different character?

Mr. SARFATY. Well, I must decline again to be more specific, sir; except to say that the only matters that were considered by that grand jury, after I commenced presenting this case, were matters involving the same subject matter, and, so far as I recall, no other assistant presented any other distinct character of case. No other assistant presented any case to that grand jury after the latter part of September or whenever I commenced to present this case.

Mr. GARD. By whom was the information furnished to you regarding this particular case?

Mr. SARFATY. Most of the information I obtained was obtained from the witnesses before the grand jury.

Mr. GARD. Had you knowledge of what the witnesses would testify to, before their appearance before the grand jury?

Mr. SARFATY. In some cases I had, and in many cases I had not.

Mr. GARD. Who gave you the information in the case that you had before that grand jury?

Mr. SARFATY. On some occasions, I read reports of special agents of the Department of Justice, and on some occasions I had talks with such agents; on some occasions I had talks with the witnesses themselves.

Mr. GARD. Let me ask you this: Does the New York office of the district attorney maintain a special department of investigators, who are attached particularly to this office, I mean?

Mr. SARFATY. It is the general Bureau of Investigation of the Department of Justice, under Mr. A. Bruce Bielaski, of Washington and has a New York office. That is the only office outside of the Secret Service and internal-revenue agents, of course, that we use for different kinds of cases. I think there are about seven or eight different kinds of investigators we use, for different kinds of cases.

Mr. GARD. Are they permanently attached to the New York office, or are they subject to transfer, under the direction of Mr. Bielaski?

Mr. SARFATY. Mr. Bielaski has control over only one body. That is the Bureau of Investigation. I do not know what rules govern them. They do seem to change. There are men here now that have not been here very long, and other ones seem to disappear, but I do not know what the rules are.

Mr. GARD. I ask you now whether or not there was any evidence presented against Representative Buchanan, who was indicted on this same charge before this grand jury?

Mr. SARFATY. I must respectfully decline to answer, except as I have heretofore answered.

Mr. CARLIN. You mean as you have heretofore declined to answer?

Mr. SARFATY. And have heretofore answered. I have already testified; so far as I knew, evidence was presented in every case under which an indictment was found.

Mr. GARD. Will you state whether or not witnesses were called in this particular case, which resulted in this indictment against these seven or eight different men?

Mr. SARIATY. Whether any witnesses were called before the grand jury?

Mr. GARD. Yes.

Mr. SARFATY. Witnesses were called.

Mr. GARD. And will you state whether they testified or not?

Mr. SARFATY. I will state that the witnesses did testify; yes, sir.

Mr. GARD. Again I ask you, will you state whether or not there was any evidence offered to the grand jury, against Representative Buchanan?

Mr. SARFATY. I must respectfully continue to decline to answer, except as I have heretofore testified.

Mr. GARD. Your declination is based, as I understand, upon your conference with the district attorney, Mr. Marshall?

Mr. SARFATY. Yes, sir.

Mr. GARD. I think that is all I want to ask.

Mr. CARLIN. I want to ask you just another question or two. Do you mind telling the committee what your general duties are before the grand jury?

Mr. SARFATY. To present evidence—send evidence of the commission of offenses which are cognizable, before the grand jury.

Mr. CARLIN. What do you mean by presenting evidence?

Mr. SARFATY. Question the witnesses.

Mr. CARLIN. Do your duties include an argument or summing up at the end of the testimony?

Mr. SARFATY. They do at times.

Mr. CARLIN. Then at times you do make an argument before the grand jury with reference to the particular facts before them?

Mr. SARFATY. I do at times; yes. I would rather amend the statement I have made. Rather than say that I make an argument I state the facts.

Mr. CARLIN. Do you comment on the facts?

Mr. SARFATY. I don't think I ever have on the weight of the facts; never.

Mr. CARLIN. Well, do you in the statement of facts endeavor to persuade the grand jury to bring in an indictment or true bill?

Mr. SARFATY. I never have attempted in anywise to persuade any grand jury to return a true bill in any case.

Mr. CARLIN. You have never told them you thought it was their duty to return a bill?

Mr. SARFATY. I have never told them I thought it was their duty to return a bill in any case.

Mr. CARLIN. Were you in charge of the grand jury when Rae Tanzer was indicted?

Mr. SARFATY. I know nothing about that case. I was not in charge of the grand jury; never had any direct knowledge of any of the facts.

Mr. CARLIN. Do you know whether she has ever been brought to trial or not?

Mr. SARFATY. I do not believe she was ever brought to trial. There was some trial in the case while I was out of the city. I am not certain; I would prefer not to answer.

Mr. CARLIN. Your answer is that you do not know?

Mr. SARFATY. My answer is that I do not know. I was going to state hearsay; I think I had better not.

Mr. CARLIN. Did you have charge of the grand jury that indicted Slade?

Mr. SARFATY. Never had any connection with the Slade case or the Tanzer case.

Mr. CARLIN. In the case of Buchanan and others, the case of the indictment before the grand jury, do you recall whether you summed up that case or not yourself?

Mr. SARFATY. I must decline—I do recall, but I must decline to answer for the reasons heretofore given.

Mr. CARLIN. It is part of your general duties to sum up any case if you care to do so?

Mr. SARFATY. As I understand my duties, yes; and when you state sum up I would like to be understood to mean, in answer to that, it is part of my duties, as I understand it, to state the facts as distinct from argument.

Mr. CARLIN. You mean by stating the facts to—

Mr. SARFATY. Refresh the recollection of the jurors as to the facts that have been given in an extended case.

Mr. CARLIN. And in doing that, you have access, of course, to the stenographic notes of the stenographers?

Mr. SARFATY. Yes.

Mr. CARLIN. Now, about those stenographers' notes, you make use of those notes in the court in the trial of cases?

Mr. SARFATY. There has been no case in which that has been done, so far as I recollect, except perhaps a case of perjury before the grand jury. I have never had such case, and I do not recall whether it is even used in that case.

Mr. CARLIN. You are not numbered among the trial force of the district attorney?

Mr. SARFATY. Yes, sir; I try cases also. If I may explain, we start the case and go all the way through with the case, unless some one else is assigned to take care of the case.

Mr. CARLIN. Did you have anything to do with the Oppenheimer case?

Mr. SARFATY. Had nothing to do with that, sir.

Mr. CARLIN. Did you have anything to do with the investigation by the grand jury of the Keen matter?

Mr. SARFATY. Keen; no, sir.

Mr. CARLIN. Did you have anything to do with the Kugel case?

Mr. SARFATY. I did not, sir.

Mr. CARLIN. Do you know whether or not it is the practice of the district attorney's office to turn over the minutes of the grand jury to the district attorney for the city, or for the county or State, for his use in certain cases?

Mr. SARFATY. I have never heard of it being done.

Mr. CARLIN. You do not know whether it was done in the Keen case or not?

Mr. SARFATY. I do not know anything about the Keen case, except what I read in the papers yesterday.

Mr. CARLIN. I think I asked you, and you said you were not sworn to secrecy as to what takes place in the grand-jury room?

Mr. SARFATY. I would rather read my original oath over. I am positive I took no separate oath, but I don't remember the original form of oath I took.

Mr. CARLIN. Unless it is included in your oath of office, you do not take the oath?

Mr. SARFATY. That is correct, sir.

Mr. CARLIN. I wish you would examine that oath.

Mr. SARFATY. I shall do that, sir. That is on file in Washington, but I believe I can get one that is in all respects different.

Mr. CARLIN. Do you take it in open court?

Mr. SARFATY. I swear to it before a notary public. I am satisfied if I see the printed form of oath, I can tell in a very few minutes.

Mr. NELSON. I will read you something. [Reading:]

United States District Court, Southern District of New York.

To ———

UNITED STATES v. ——— (No. —).

By virtue of a writ of subpoena, to you directed and herewith shown, you are commanded and firmly enjoined that, laying all other matters aside and notwithstanding any excuse, you be and appear in your proper person before the judge of the district court of the United States of America for the southern district of New York, at a session of court to be held in the United States court room in the United States court and post-office building in the city of New York, in and for the said southern district, on the — day of —, 1915, at — o'clock in — noon of the same day, to testify all and everything which you may know in a certain cause now pending undetermined in the said court, then and there to be tried, between the parties therein named, on the part of the United States, and not to depart the court without leave thereof, or of the district attorney.

And this you are not to omit, under penalty of \$250, and other penalties of the law.

Dated the — day of —, 1915.

By the court.

H. SNOWDEN MARSHALL,
United States Attorney.

NOTE.—Report at room —. In order to secure your witness fees and mileage it is necessary that you shall retain this card and present same at the United States attorney's office, room 208, upon each day upon which you attend court as a witness.

Then, stamped on the face in red ink:

Witness will please call at room 206, second floor, post-office building, Broadway and Park Row.

On the back I find, "Department of Justice, office of the United States attorney, Southern District of New York," with various places to punch months and days.

Mr. SARFATY. Yes, sir.

Mr. NELSON. Is this the card that you referred to?

Mr. SARFATY. That is the subpoena ticket; yes, sir.

Mr. NELSON. Now, that goes with an——

Mr. SARFATY. With an original subpoena.

Mr. NELSON. Who is the clerk that issues this ticket?

Mr. SARFATY. Mr. Jeremiah Bonner. He has three or four assistants.

Mr. NELSON. What is his official position? Is he under the Department of Justice in the district attorney's office exclusively?

Mr. SARFATY. He works exclusively in the district attorney's office. I believe he is on the clerical force of the district attorney.

Mr. NELSON. Is he appointed by the clerk of the court who originally issues subpoenas?

Mr. SARFATY. I am pretty certain he is appointed by the United States district attorney.

Mr. NELSON. He is just a clerk, for convenience?

Mr. SARFATY. He takes care of getting subpoenas through. We merely give him the names.

Mr. NELSON. Does he give them to you in blank, or you fill them out as you want them, or does he fill them out?

Mr. SARFATY. We prepare a list, giving the names, the name of the case, the date when we want the subpoena returnable if it is a subpoena duces tecum, the papers we want, and such other information as will enable him——

Mr. NELSON. And he does the clerical work?

Mr. SARFATY. Yes, sir.

Mr. NELSON. Is it always customary to put this note on "Call at room so and so"?

Mr. SARFATY. That is his room; 208 is his room.

Mr. NELSON. As a rule, do you not put your room on, if you want to see the witness?

Mr. SARFATY. Oh, no.

Mr. NELSON. They always come to the clerk?

Mr. SARFATY. They come to the clerk first, so that the card may be punched and a record kept, so that the witness may be paid his witness fee and mileage.

Mr. NELSON. Does not the number vary in various tickets, so that the request means to come to the assistant who has the case in charge?

Mr. SARFATY. No, sir.

Mr. NELSON. You are positive that you have not had them come to your room first, by making this note on the ticket?

Mr. SARFATY. I think, perhaps, I may straighten you out. You are referring to this request to call?

Mr. NELSON. Yes.

Mr. SARFATY. That is an entirely different matter.

Mr. NELSON. Is that separate from the ticket?

Mr. SARFATY. Entirely separate; yes, sir.

Mr. NELSON. Well, now, explain the difference between the ticket and the request to call.

Mr. SARFATY. The ticket is a process of the court, calling for the attendance of the witness under compulsion, and a request to call is a request sent to a witness, asking him to call at the office of the United States attorney, which is not a process of the court.

Mr. NELSON. I notice here that room 86 is crossed off and 208 is inserted. Can you explain that?

Mr. SARFATY. That is the change in the building. We had some alterations made here about a year and a half ago and those old cards, still in use. Used to be on the third floor, room 86, the clerk's office.

Mr. NELSON. How many assistants are there in this office of Mr. Marshall?

Mr. SARFATY. Including special assistants, there are between 23 and 25.

Mr. NELSON. Have they each a special assignment to a particular line of work?

Mr. SARFATY. In a general way—in a very general way.

Mr. NELSON. That varies somewhat. What is your specialty, so far as you have it?

Mr. SARFATY. I have been attached to the criminal division since I have been here, and then I have done more or less particular kinds of work, if you desire me to tell you.

Mr. NELSON. Yes.

Mr. SARFATY. I started off with bankruptcy cases, and I had a number of opium cases last year, and I think, in general, that was my work last year, and this year I have tried one murder case and presented this matter which is under question here.

Mr. NELSON. Now, what is the practice? You having charge of a case, do you consult Mr. Marshall continually as to the progress of that case?

Mr. SARFATY. It varies with the case. On an important case I do. On a case that does not seem to me to be of so much importance I do not.

Mr. NELSON. And he keeps a kind of supervision of your work?

Mr. SARFATY. He does entirely, sir. You asked if I reported continually, as I understood it. I do report from time to time on all of my cases and report directly to Mr. Wood.

Mr. NELSON. In other words, you would not begin a case before the grand jury and conduct it before a petit jury without consulting him?

Mr. SARFATY. I sometimes consult him, or I would consult Mr. Wood, who is in charge of the criminal division.

Mr. NELSON. You consult Mr. Wood sometimes?

Mr. SARFATY. Oh, yes; on a great many occasions, and a great many times, both.

Mr. NELSON. The clerk calls my attention to the fact that I cut you off. Do you wish to finish your sentence?

Mr. SARFATY. I will repeat it. I understood that I had answered the question. I will repeat the answer so there can not be any doubt. On some occasions I report to Mr. Wood and Mr. Marshall. On other occasions I report directly to Mr. Marshall, and on other occasions I report to Mr. Wood alone. It depends largely on the importance of the case.

Mr. NELSON. Take it in a case of this kind, you would report constantly, daily, would you not?

Mr. SARFATY. I believe that I reported almost every day.

Mr. NELSON. Did you go over to Washington on this case?

Mr. SARFATY. I did not.

Mr. NELSON. Does Mr. Marshall sometimes let an assistant district attorney conduct a case throughout, without his inquiring into it at all?

Mr. SARFATY. I do not recall any case that I personally have conducted, without either reporting to Mr. Marshall, who in return reported—without either reporting to Mr. Wood, who in turn reported

to Mr. Marshall or else reported to Mr. Marshall direct. So far as I know, the practice is either to advise Mr. Marshall directly, or through Mr. Wood.

MR. NELSON. Now, there has been testimony here by a number of people as to the practice before the grand jury. Mr. Wise gave us the benefit of his experience yesterday. Please tell me how it is that you sometimes secure an indictment against a bunch or a list of persons, where—I will explain—a great many names have been considered, but finally there is a separation of those that are thought to be guilty and those that are not. How is that accomplished before a grand jury, by your department?

MR. SARFATY. I must decline—

MR. NELSON. I am speaking generally now.

MR. SARFATY. I do not know of any such general practice, so far as the Department of Justice is concerned—that is, the United States attorney's office.

MR. NELSON. Do you mean to say it is not the practice of your office to indicate what persons should be indicted?

MR. SARFATY. Before the grand jury?

MR. NELSON. Yes.

MR. SARFATY. I must decline to answer that, sir.

MR. NELSON. Will you decline on the request as to general practice?

MR. SARFATY. I will state as a general practice, that of course names are presented to the grand jury that the grand jury could not indict.

MR. NELSON. How do you discriminate? How does the grand jury discriminate between those that should be indicted and those that should not be indicted? Do you hand in a list, or are the names in the indictment?

MR. SARFATY. The names are in the minutes of the grand jury.

MR. NELSON. Explain that.

MR. SARFATY. The grand jury keeps minutes of its meetings, names of witnesses, names of defendants or prospective defendants.

MR. NELSON. Do you mean to say that you do not indicate to the grand jury which witnesses you think should be indicted and which should not be indicted?

MR. SARFATY. The names of the defendants are, of course—or the prospective defendants or persons under investigation—are, of course, stated to the grand jury by the official presenting the case.

MR. NELSON. You do indicate in some way, do you not, before a grand jury, which defendants you think ought to be indicted and which defendants you think ought not?

MR. SARFATY. I state, sir, as I have stated, the names of the persons under investigation are stated to the grand jury.

MR. NELSON. I know, but you sometimes have many defendants—many names—and finally there is a decision somewhere as to which are really guilty and which are not?

MR. SARFATY. That is a decision of the grand jury.

MR. NELSON. Do you not yourself indicate in some form what you think the grand jury should do?

MR. SARFATY. So far as I recall, I never have stated directly or indirectly to a grand jury my belief in a man's guilt.

Mr. NELSON. Here 100 persons may be considered in a conspiracy case, and there is testimony presented, and finally 15 are indicted out of the 100. Now, how is that arrived at by the grand jury?

Mr. SARFATY. The grand jury arrive at that in secret session.

Mr. NELSON. And your department never suggests by papers or verbally what 15 of those 100 should be indicted?

Mr. SARFATY. I am answering for myself. I will state that I never have suggested any such thing.

Mr. NELSON. Do you wish this committee to understand, then, that before this grand jury the grand jury votes separately on every person?

Mr. SARFATY. I wish you to understand no such thing, because I don't know how they vote. We are not permitted to be present when the grand jury votes.

Mr. NELSON. Do you wish this committee to understand that you do not designate in any way which of these defendants you think a true bill should be voted against?

Mr. SARFATY. I wish you to understand throughly, sir, that I have never requested or suggested the indictment of any man, except to present the evidence.

Mr. CARLIN. Following up Mr. Nelson's line of examination, take a case where a corporation, through its officers, is being investigated by the grand jury; say there are a dozen officers of a corporation, president, secretary and treasurer, and members of the board of directors. Now, it transpires of that number, we will say, there are 12 or 15 and it transpires that only 2 happen to be indicted. Is there any function of yours that brings about the centralizing of the jurors' minds upon the particular two?

Mr. SARFATY. That is entirely possible, sir. The presenting of the evidence itself would undoubtedly indicate that those two men were the guilty persons in the assumed case. That is entirely possible. I want it understood here, sir, I do not say who should be indicted.

Mr. CARLIN. Who made the complaint against Martin, Schulteis, and Buchanan to your office?

Mr. SARFATY. I must decline to answer that, sir, on the ground of public policy.

Mr. CARLIN. Is there anything in which the public can in any way be injured by your disclosing the fact who made that complaint?

Mr. SARFATY. I believe it would be at this time.

Mr. CARLIN. Did anybody make any complaint?

Mr. SARFATY. There was no formal complaint made. When I say formal complaint, I mean a sworn complaint on which an arrest was made. That was not done in this case.

Mr. CARLIN. Was there an unsworn complaint made by anybody?

Mr. SARFATY. There were statements made, which indicated the connection of certain persons with the case.

Mr. CARLIN. Were those statements the result of the activities of your office, or were they voluntarily made to you?

Mr. SARFATY. They were the result of other work which I had been doing in this same general direction, as a natural development of the case.

Mr. CARLIN. The case does not naturally develop itself. Something develops a case, but you have to do the balance of the developing?

Mr. SARFATY. That is correct, sir.

Mr. CARLIN. Now, in this case which I am discussing, did this case develop itself or did you develop it?

Mr. SARFATY. I developed it.

Mr. CARLIN. Did you develop it in the usual way, by a complaint being made to you by somebody?

Mr. SARFATY. I would not call it a complaint, sir. I would rather say that facts came out in the course of the case. There was originally a complaint—that was when I started back in September.

Mr. CARLIN. Complaint against Buchanan and others?

Mr. SARFATY. I must decline to answer that, sir.

Mr. CARLIN. What is your ground for declining to answer that?

Mr. SARFATY. The grounds heretofore enumerated—that is, it would be against public policy at this time to state the source of the complaint.

Mr. CARLIN. Did anyone present any evidence to you against Buchanan and others before you yourself started the investigation by the grand jury?

Mr. SARFATY. Not before I started in September, 1915.

Mr. CARLIN. Then the start was of your own motion, and not from the motion of a complaint elsewhere?

Mr. SARFATY. No; I would not say that.

Mr. CARLIN. What would you say about it? How was this start made?

Mr. SARFATY. This started in a somewhat different direction; but I must decline to be more specific. In other words, I want to repeat what I said before—it was the natural outgrowth of a matter which I commenced.

Mr. CARLIN. You mean another matter which you commenced?

Mr. SARFATY. Another matter along the same lines—a similar matter.

Mr. CARLIN. There was another similar matter?

Mr. SARFATY. That is correct, sir.

Mr. CARLIN. Well, along that same line, were complaints made to you against other officers of the Peace Council who were not indicted?

Mr. SARFATY. No, sir.

Mr. CARLIN. Then all were indicted against whom you had complaints?

Mr. SARFATY. I would not say that, sir. I would prefer not to say that there were complaints made. As I said, it was the natural outgrowth of another matter, and I have stated that no formal complaint was made against any persons in this matter that you have questioned me about so far.

Mr. CARLIN. You qualify your language—you say formal complaint—a complaint in writing—and when not in writing it is just an ordinary informal complaint?

Mr. SARFATY. No, sir. I see now, perhaps, I have been rather indefinite. I mean that no complaint of any kind was made to me against the persons in this investigation—that I became aware of a particular situation in the course of an investigation of a similar case. I think that explains it.

Mr. CARLIN. As a matter of fact, in the investigation of von Rintelen, with reference to this passport fraud, this other matter developed; that is what you mean to say?

Mr. SARFATY. That is correct, sir.

Mr. CARLIN. Now, what is the great secret about that that you have been declining to testify about? Everybody seems to know that. It has been published in all of the papers.

Mr. SARFATY. I have not seen it in the newspapers.

Mr. CARLIN. It has been testified to before this committee.

Mr. SARFATY. I have not seen any of the testimony before this committee, sir.

Mr. CARLIN. Mr. Bielaski himself was a witness. You will remember he was called. He testified to that effect.

Mr. SARFATY. I never heard it.

Mr. CARLIN. He probably did not have the opportunity of being advised by Mr. Marshall not to testify, but he did testify to those facts. Now, Mr. Sarfaty, for the present that is all the committee will ask you. I want to inquire of you whether you expect to be in New York for the next few days?

Mr. SARFATY. I certainly do, sir.

Mr. CARLIN. Because the committee may have an interesting communication to make to you.

Mr. GARD. I think I may speak for the entire committee when I say that we only desire to get information in this case, and we are acting in a spirit of entire impartiality.

Mr. SARFATY. I have no doubt of that at all.

Mr. GARD. I am interested in this proposition. I asked you a direct question, embodied in one of these charges, when I asked you to state whether or not any evidence had been presented to the grand jury which resulted in an indictment against Representative Buchanan, and you declined to answer. You declined to answer because of your having had a conference, you said, with your superior in office, Mr. Marshall, district attorney; and being entirely fair, and as you may be in error about the extent of the caution which Mr. Marshall desired you to exercise in your statements here, I would ask that you again communicate with him and ask if it is the policy of the district attorney's office—speaking of Mr. Marshall representing that office—not to answer this question as I have indicated, whether there was any evidence, not what the evidence was—whether there was any evidence, because that is the direct charge here. I would ask that you be permitted to again come and disclose it, if you care to.

Mr. NELSON. I would like to have you state verbally again, if you will, what your instructions from Mr. Marshall were.

Mr. SARFATY. My instructions from Mr. Marshall were, speaking for himself and for the Attorney General—I was instructed not to answer any questions which would indicate any of the proceedings had before the grand jury in this matter.

Mr. NELSON. Now, you have also refused to answer on the ground of public policy. Was that within your instructions?

Mr. SARFATY. That was a part of the instructions of the Attorney General and Secretary of State of the United States.

Mr. NELSON. To you?

Mr. SARFATY. To Mr. Marshall, and through Mr. Marshall to myself.

Mr. NELSON. You did not include that in your former statement?

Mr. SARFATY. I think I have included both.

Mr. NELSON. You said what occurred before the grand jury. You did not say anything about public policy.

Mr. SARFATY. I think I did, sir.

Mr. NELSON. I will just have repeated what you said by the stenographer.

Mr. SARFATY. I did not give that as a reason. I asked permission to state my reasons and the chairman told me it would not be necessary at that time, and later I referred to that matter.

Mr. CARLIN. You can give your full instructions now.

Mr. SARFATY. Those were the only instructions.

Mr. CARLIN. Then your instructions from the Secretary of State and from the Attorney General were not to answer any questions which you might consider to be not in line with public policy?

Mr. SARFATY. No, sir; I have not stated that. I have stated—I was instructed to state—those particular matters, showing proceedings before the grand jury would be in contravention of the public policy.

Mr. CARLIN. I asked you a question just now and you declined to answer it on the ground it would be in contravention of public policy.

Mr. SARFATY. I had to do that because of my instructions.

Mr. CARLIN. Then your instructions did include the question of public policy?

Mr. SARFATY. Yes.

Mr. CARLIN. Who was to be the judge of that? You were, I suppose, when the question was asked you?

Mr. SARFATY. I presume, naturally, the matter would have to be left to me in the element of analysis.

Mr. CARLIN. You were practically, then, instructed not to answer anything that in your judgment the committee ought not to ask you?

Mr. SARFATY. No; I was not instructed that. I have stated my instructions fully.

Mr. GARD. Let us try to clear this up. You had no instructions directly from the Department of Justice or any executive department in Washington?

Mr. SARFATY. I have not.

Mr. GARD. Your instructions came immediately from your superior in this office, Mr. Marshall, the United States district attorney?

Mr. SARFATY. That is correct, sir.

Mr. GARD. And your instructions ran—this is my own way of expressing it and it may not be correct; if not correct, please advise me—my understanding of your instructions is that you were instructed not to answer any questions relative to the procedure in the grand jury at the September term or at any other term for this Federal court, on the ground that disclosures of that would be against public policy?

Mr. SARFATY. No; that is not correct, sir. On the ground the disclosure of this particular matter at this time would be against public policy and on the ground that the statement of any matters before the grand jury—

Mr. GARD. That is what I said—on the ground that any statement of any matter before a grand jury or any procedure therein being considered would be against public policy?

Mr. SARFATY. No, sir. I understand it is the particular subject matter of this case which involves public policy and not the statements before the grand jury, although the statement of proceedings before the grand jury does, to some extent, involve public policy, but, as I understand my instructions, this particular subject matter is the thing which involves public policy.

Mr. GARD. Your instructions, then, as you understand it, are that public policy applies to any disclosure you might make in general to proceedings before a grand jury?

Mr. SARFATY. I believe it does to some extent, too, but particularly to the subject matter.

Mr. GARD. To this immediate subject matter?

Mr. SARFATY. Yes, sir.

Mr. CARLIN. You are excused for the present.

Mr. SARFATY. All right, sir.

TESTIMONY OF MR. EDWARD SWANN.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Swann, will you give your name and professional occupation to the stenographer?

Mr. SWANN. Edward Swann. I reside at 39 West Eleventh Street, Manhattan, and I am district attorney of New York County, and have been since January 1.

Mr. CARLIN. Mr. Swann, are you acquainted with Mr. H. Snowden Marshall?

Mr. SWANN. Yes; I have known him for 20 years.

Mr. CARLIN. I want to ask you whether, in the case of a man by the name of Keen—David Keen—now pending before you, for the purpose of investigation and probable indictment, whether or not the minutes of the grand jury investigation, which was had by the Federal grand jury, was turned over to you?

Mr. SWANN. That matter is in charge of my assistant, Mr. Dooling, and he is present. It was turned over to him.

Mr. CARLIN. Will you just ask him that question?

Mr. SWANN. Yes. Mr. Dooling, have we the minutes of the Federal grand jury in that case?

Mr. DOOLING. We have not. I do not recall that we have.

Mr. SWANN. Have you the file papers there?

Mr. DOOLING. We have.

Mr. SWANN. Suppose we just hand them to the committee, whatever we have received from the Federal district attorney. We will just turn them over to the committee.

Mr. CARLIN. We will not keep them. We will look at them just a moment.

Mr. SWANN. Do whatever you wish with them.

Mr. CARLIN. Thank you. How long have you been a practitioner at the bar?

Mr. SWANN. Twenty-five years.

Mr. CARLIN. You say you have known Mr. Marshall for 15 years?

Mr. SWANN. Probably 20. Mr. Dooling tells me that we have a great many other papers in the case, because we have made independent investigations and they are now in process in the district attorney's office. We made very careful investigations in the case, going at it every day. Now, if you would like to have in confidence anything that we have, we will turn it over to you.

Mr. CARLIN. Very kind of you. I am very glad you do not take the position of public policy.

Mr. SWANN. Not with this committee. It seems to me that public policy ought to be perfectly safe in their hands. That is what they are there for.

Mr. CARLIN. Now, Judge, are you familiar with the conduct, in a general way, of the grand jury system—Federal grand jury system?

Mr. SWANN. Yes; it is analogous to ours, and I made quite a study of it. In fact, I wrote an article on the subject two years ago, published in one of the papers, which I now have with me, and I have compared our system with that in England and all of the English possessions, and then have taken up the subject of the grand-jury system entirely, as it has been done in the English possessions of India and Cape Colony and Australia, and also the subject of the modification of the grand jury system in Oklahoma and in California, so that I have considered the whole subject very carefully.

Mr. CARLIN. Have you reached the conclusion, as Mr. Henry A. Wise seems to reach, that the grand jury really has no functions to perform?

Mr. SWANN. No; but, on the contrary, it seems to me that the grand-jury system is an additional barrier between unjust accusations and the professional zeal of a too ardent prosecutor.

Mr. CARLIN. Then you think that the grand jury system has a function to perform?

Mr. SWANN. Yes, sir; it has the veto power, for instance, over the acts of the prosecutor. It has the veto power over the acts of the committing magistrate. After the committing magistrate has held a defendant for trial for the action of the grand jury the adverse action of the grand jury might save an innocent citizen from unjust accusations. It is an additional barrier and shield, as it were—a protection.

Mr. CARLIN. Mr. Wise yesterday, speaking with particular reference to the grand jury system in New York, stated that a district attorney could indict anybody that he wanted to indict, and that therefore it was practically the will of the district attorney which was the will of the grand jury. Is that your experience?

Mr. SWANN. Mr. Wise ought to know. He was a Federal district attorney, and if matters were at that serious pass when he was Federal district attorney I did not know it. I don't think the Federal authorities knew it either.

Mr. GARD. If they were, he should have resigned?

Mr. SWANN. I should think so. I should think that any Federal district attorney or district attorney of the county that would tamper with the grand jury or in any way influence its actions pro or con is not fit to hold the office, and it would be a crime under the State law. It would cause the setting aside of any verdict.

Mr. CARLIN. How do you regard Mr. Marshall as an official?

Mr. SWANN. Mr. Marshall, I can tell you his reputation at the bar. I do not know a single man out of the 14,000 lawyers in the city of New York who I should pick out as having higher ideals, American ideals, or of better professional ethics than Mr. Marshall. In the 20 years that I have known him and during the time that he has been at the bar I have never heard his professional integrity called into question, and while he has been here I have never heard his professional acts called into question, except by certain enemies that he has made, and for which I admire him very much more because he has made them. You must know, gentlemen, that a man in his position here, surrounded as he is in the greatest city in the world, and with the great commercial center as we are, and doing the tremendous business that we are in this city, that we have all sorts and conditions, and we have here what is known as the bankruptcy ring, and that bankruptcy ring is a thorn in the side of honest business. It is something that I have made a special study of. It is a ring that holds Mr. Marshall in particular enmity, and if they could do anything to injure him or to remove him it will be one of the greatest things for that species of crime in the city. There is no one thing, I think, that they would like to accomplish greater than the removal of Mr. Marshall, or something that would prevent him from calling them to their just accounts.

Mr. CARLIN. Now, Judge, in the State courts what is the practice with reference to the testimony taken before the grand jury? That is to say, are the minutes produced whenever the question is raised as to the facts whether there was evidence or not before the grand jury on which to base an indictment?

Mr. SWANN. Yes; on occasions, and whenever there is reason for it. People against Glynn is the leading case in our court of appeals. People against Montgomery—

Mr. CARLIN. Can you tell me where that case is reported?

Mr. SWANN. People against Glynn is about One hundred and eighty-fifth New York.

Mr. DOOLING. We can furnish the committee—

Mr. SWANN. We will give you the volume. It is either One hundred and eighty-fifth New York or One hundred and eighty-sixth. That is the leading case.

Mr. CARLIN. And people against who?

Mr. SWANN. People against Montgomery, in our appellate division. Those are the two leading cases upon which all applications are based. The People against Glynn contains all of the learning on that point. That is the authority, I think, you will find in other States. It is cited with great approval in other States. I will put it that way. I think that case was written by the late Judge Werner, who has just died and one of the ablest judges in the court of appeals. It is all discretionary with the judge presiding in the court.

Mr. CARLIN. But the practice is, in effect, that when the question is raised that there is no evidence before the grand jury, for the court to require the production of the minutes?

Mr. SWANN. Yes; certainly; if there is any reasonable ground to suspect, so that the judicial mind may determine to that effect that improper evidence has been submitted to the grand jury. The courts all over this State will grant an order for the inspection of the minutes, and that means for a copy of the minutes verbatim.

Mr. CARLIN. Does not seem to be the rule in Federal courts here. They do not seem to follow the State in that. Do you know what the practice is in the Federal courts with reference to that?

Mr. SWANN. A court has inherent power to grant it, and the People against Glynn says so—inherent power to grant it whenever they wish and whenever they think that a proper case has been made out.

Mr. CARLIN. Does not seem to be the practice in the Federal courts.

Mr. SWANN. I do not know.

Mr. CARLIN. Did you ever know of a case where the Federal court required the production of the minutes?

Mr. SWANN. No; I do not know of a specific instance of it, but I am certain it can be done. It is entirely discretionary with the presiding judge.

Mr. CARLIN. Now, in practice, does one of your assistants conduct the investigation before the grand jury?

Mr. SWANN. Yes; we have a special statute in this State, enacted about eight years ago, maybe nine years ago, permitting the district attorney—the district attorney always is entitled to go before the grand jury. The district attorney of this county is the official adviser of the grand jury on points of law, never on points of fact. It would be misconduct on his part to advise the jury either one way or the other on a question of fact, but he is the official adviser in this county and all over the State of New York on questions of the law. The grand jury usually refers to the district attorney and defers to his opinion in regard to questions of law, not to the judge, unless it is a very exceptional case.

Mr. CARLIN. Judge, do you know at whose instance or who made the complaint before your office in the matter of David Keen?

Mr. SWANN. Now, the witnesses themselves came to the district attorney of this county and gave the facts to us, and then we investigated and we found that the Federal authorities knew something about it, and we asked, as we usually do, for reciprocal action. We have to. There has to be reciprocity between the Federal authorities and the State authorities, in order that justice may prevail. It does not prevail then very frequently, even with the combined authorities.

Mr. CARLIN. Of course you knew that the Federal grand jury had declined to indict?

Mr. SWANN. I didn't know it; no.

Mr. CARLIN. After the district attorney had referred the matter to a referee to decide whether any crime had been committed?

Mr. SWANN. No; I did not know any facts in connection with the case.

Mr. CARLIN. Let me ask you if this is usual in the conduct of the office of the district attorney. In the case of Keen, Mr. Wood, one of the district attorney's assistants here had been employed in a civil matter. Then a warrant was issued, a criminal warrant against Keen, and that was brought to the attention—the criminal warrant was issued by the district attorney's office, then it was brought to the attention of Mr. Marshall and one of his assistants was interested in the civil matter against Mr. Keen, and he selected an umpire or referee, outside of the office entirely, to determine whether or not a crime had been committed and that an indictment should be had.

That referee decided that there was no crime committed and, therefore, no indictment was found. Is that the usual thing?

Mr. SWANN. I never heard of that procedure, but it appears that the Federal district attorneys have the right to practice law in civil matters. That is not the case with the State district attorney or any of his assistants. They can not practice law, and they must confine all their attention to the duties of the office. That probably was an original method of Mr. Marshall's of arriving at justice as between his assistant and some one who probably had accused him. Now, these facts that you speak of—this is the first time I ever heard anything in regard to them. I never knew of these facts that you speak of.

Mr. CARLIN. They were brought out here in testimony.

Mr. SWANN. My assistant, Mr. Dooling, who is here, had charge of the case. The minute it came into the office I assigned it to him.

Mr. CARLIN. If you had known there had been an official referee who had decided there was no crime committed, it might have saved your office trouble?

Mr. SWANN. Very much; I would have been very much obliged to anyone who had told me that. Mr. Commissioner, we in this county dispose of 5,000 indictments per annum and 8,000 misdemeanors that pass through the criminal courts.

Mr. CARLIN. You do not indict for misdemeanors?

Mr. SWANN. No, we do not, and 8,000 merely on information, so that the district attorney of this county is really very much of an executive and administrative officer. It is impossible for him to try the cases. He has 53 assistants, besides an administrative staff, making in all probably between 170 and 200 men, so it is impossible for him to take up the details of each of these cases. The best he can do is to assign them to competent assistants. This one was assigned to a gentleman who you will find to be most alert and most competent to manage it. That was my opinion in turning it over to him. I knew it was an intricate case. We have not yet made up our minds either one way or the other, but we will investigate anything that is presented by any reputable citizen, reserving our opinion until we understand the facts, and up to date we do not know all of the facts in that case. Anything that comes from the Federal authorities we give the most respectful consideration.

Mr. CARLIN. This was one where the Federal authorities had voted no crime was committed.

Mr. SWANN. Yes.

Mr. CARLIN. I do not have any other questions.

Mr. SWANN. I think there was something published in the papers that I would like to mention. The public press seemed to chide Mr. Marshall for using the subpoena for investigation. I have several forms of subpoenas which we are using and which, I understand, are practically the same that they use here. With the 5,000 indictments that are found per annum in the State courts here in this county, besides the 8,000 informations, it is impossible, with two grand juries sitting and sometimes three in our county, it is impossible to go before that grand jury with every man that we think may be a witness, and it is necessary that the district attorney, like a practicing attorney, confers with witness in advance to see if they know

anything in regard to the case, and who sift the evidence and the facts that may be presented in a businesslike way before the grand jury.

Mr. CARLIN. The particular matter you saw published was probably this state of facts: That a case where an indictment has been found and was about to be put to trial, or was on trial, the witnesses of the defendant were subpoenaed before the grand jury and interrogated with reference to their testimony which was to be had before the petit jury. That is not the practice in your office, is it?

Mr. SWANN. No; unless there was something—unless there was a series of crimes or something in the nature of a conspiracy and the grand jury was still investigating the series of crimes or the conspiracy.

Mr. CARLIN. This was a case of conspiracy.

Mr. SWANN. Well, then, a conspiracy. It is very difficult to say how many men were combined, and frequently a district attorney will discover that it is very much larger than he at first anticipated. In that case I can see he would be perfectly justified in putting before the grand jury any witness's testimony—it make no difference who he is—who might give material testimony as to the conspiracy; but to use it for the purpose of obtaining the evidence of the defense would be reprehensible, if it was for that purpose only.

Mr. GARD. The papers you submit we will return them.

Mr. SWANN. Very well. Now, gentlemen, anything you want at any time, without reserve you may have. The latchstring is on the outside and the door swings in to you.

Mr. CARLIN. Judge, that is very kind of you.

Mr. GARD. We thank you very much for the kindly expression.

Mr. CARLIN. What percentage of indictments of the 5,000 that you speak of are for conspiracy?

Mr. SWANN. It would be impossible for me to tell. Conspiracy under the State law is a mere misdemeanor.

Mr. CARLIN. In the case we are talking about just now, this case was about to be tried, when the counsel for the defendant himself was summoned before the grand jury and interrogated with reference to the very case of conspiracy, and his law partner was summoned as well.

Mr. SWANN. Was it suspected that he was one of the conspirators?

Mr. CARLIN. I have no means of knowing.

Mr. SWANN. That sometimes happens.

Mr. CARLIN. I have no means of knowing what was suspected. I do not think the counsel was suspected to be a conspirator.

Mr. SWANN. You do not think he was?

Mr. CARLIN. I am sure he was not, but he was summoned. That is not the practice of your court? You do not get testimony that way in your office?

Mr. SWANN. No; it would of course be a privileged communication to counsel, if he was not one of the instigators of the crime. The fact that a man is attorney would not give him any special privilege, in case he advised or procured the crime to be committed or was one of the accomplices. In that case there have been a few lawyers presented before our grand jury.

Mr. CARLIN. I was going to ask you, Judge, in presenting a case to a grand jury in the State courts, I suppose you put before the

grand jury all the witnesses who have any knowledge of the subject at all?

Mr. SWANN. All witnesses who have any knowledge, unless it is cumulative, and, of course, we would limit it then.

Mr. CARLIN. Even those witnesses whose testimony might be considered—

Mr. SWANN (interposing). In favor of the defense?

Mr. CARLIN. Yes.

Mr. SWANN. That is a policy that I have come into office on, that if any reputable citizen knows anything in regard to a matter, to the contrary of what the people's witnesses have testified, I put him before the grand jury, and let the grand jury decide it one way or the other. It is a matter entirely for the grand jury, and when they have decided it, that finishes it.

Mr. CARLIN. So the grand jury has practically all the information that your office has on the subject?

Mr. SWANN. Yes; all the information. I find the grand jury not only a barrier between unjust accusation of innocent citizens, but it is a great help to the district attorney. There may be a great public clamor against a man, and I present all the evidence before the grand jury, and if they do not indict him, I do not prosecute him. Public clamor can be, sometimes, as unjust and tyrannical as any autocrat.

Mr. CARLIN. We are very much obliged to you, sir.

Mr. GARD. Do you desire to be heard further, Mr. Sarfaty?

Mr. SARFATY. I have a statement which, with the permission of the committee, I would like to make.

Mr. GARD. Very well.

Mr. SARFATY. I have conferred with Mr. Marshall with respect to the particular question which was asked me, whether there was any evidence presented before this grand jury concerning Congressman Buchanan, and I have been advised that I was in error in my interpretation of the instruction, in refusing to answer that question, and, if I may be permitted, I would like to answer it at this time.

Mr. GARD. That is, the question I asked you?

Mr. SARFATY. Yes.

Mr. CARLIN. We will communicate with you later about the whole matter, Mr. Sarfaty.

Mr. SARFATY. Very well, sir.

Mr. CARLIN. Is Mr. Dooling here?

Mr. RUSSELL. Yes.

Mr. CARLIN. Will you take the stand, please, Mr. Dooling?

TESTIMONY OF JOHN T. DOOLING.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. CARLIN. Have you charge of the case of *The People v. David Keen*?

Mr. DOOLING. When this matter came to the office of Judge Swann, it was originally assigned to me, and I had a long interview with Mr. Anderson, and one of his associates, with respect to the complaint which he had made. The nature of the claim was one that we regarded as a commercial fraud. Judge Swann had established in his office, on the 1st of January, a bureau for the conduct of prosecutions of that nature. When that was discovered, it was

assigned to and has been in charge of Assistant Edward S. Brogan from that time. He is here, and he has been in direct touch with the matter since its inception in our office.

Mr. CARLIN. Then, I will just call Mr. Brogan. We will excuse you at this time, Mr. Dooling. Mr. Clerk, swear Mr. Brogan.

TESTIMONY OF EDWARD S. BROGAN.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. At whose instance was this proceeding against Keen started in your office?

Mr. BROGAN. I will explain that.

Mr. CARLIN. Just answer the question.

Mr. BROGAN. I was called to Mr. Dooling's office on one day, about two weeks ago, when Mr. Anderson and one Mr. Smith, who was connected with the Crown City Film Co., I believe, and had also made charges againstt Bard & Keen, were in the office. Mr. Dooling had listened to their statement and referred the case to me. That is the way it first came to my attention.

Mr. CARLIN. Did you ascertain that the Federal district attorney had previously had charge of this case?

Mr. BROGAN. Yes; I not only ascertained that, but we received all the papers from the Federal district attorney, and called Mr. Wood on the wire at once, and requested that any papers in the possession of the Federal district attorney be forwarded to the county district attorney.

Mr. CARLIN. Did that include the minutes of the grand jury?

Mr. BROGAN. No. The question came up about the minutes of the grand jury and Mr. Wood said he could not allow us to see the minutes of the grand jury.

Mr. CARLIN. Did they tell you what they contained?

Mr. BROGAN. No; he did not tell us what they contained.

Mr. CARLIN. Has anybody told you what was testified to before the grand jury?

Mr. BROGAN. Mr. Anderson has told me what he testified to before the grand jury, but I have received no information about any other testimony before that grand jury.

Mr. CARLIN. Then, you knew, when you began this investigation, that there had been a referee appointed, who had decided that no crime was committed?

Mr. BROGAN. Yes; I knew that.

Mr. CARLIN. Notwithstanding that, you preferred to make your own decision in the matter?

Mr. BROGAN. Yes.

Mr. CARLIN. That is all, I believe.

Mr. BROGAN. May I explain to you the disposition of the case?

Mr. CARLIN. Yes.

Mr. BROGAN. After spending about two or three weeks on the case—that is to say, a certain number of hours a day—and going over it with Mr. Embree, who was in charge of the grand jury, we came to the conclusion, as far as the county district attorney is concerned, that there was no possibility of proving a crime—establishing a crime.

Mr. CARLIN. Against Keen?

Mr. BROGAN. Against Bard and Keen. However, at the time there were two witnesses here by the name of Parks—Lester and Byron Parks—and they seemed to know quite a little about the affairs of the company, and we placed them before the grand jury. We allowed Mr. Parks to go on to Denver because he had a position waiting for him there. We intended that if such evidence was produced as would establish a crime, to have the grand jury continue the case. I had seen Mr. Embree and Mr. Goldsmith, who were counsel for Anderson, one of the complainants, and Mr. Goldsmith had said to me that he was of the opinion that no crime had been committed so far as the State courts were concerned.

Mr. CARLIN. Did you know that Keen and Bard had been summoned as witnesses before this committee?

Mr. BROGAN. Yes; I read it in the paper last night.

Mr. CARLIN. You did not know it until then?

Mr. BROGAN. No.

Mr. CARLIN. It has been stated here that you have practically agreed that if these gentlemen would settle this civil matter, your office would forbear from prosecution. Is that true?

Mr. BROGAN. No.

Mr. CARLIN. You have not entered into any such agreement as that?

Mr. BROGAN. No; that is not correct. Mr. Whitney—in these cases, as Judge Swann stated, when a complaint is made—and we have some reason to believe there is some doubt about the guilt of the defendant—we allow the defendant or his attorney to come to the district attorney's office and make such an explanation as he shall see fit. In accordance with that, Mr. Whitney was given the opportunity of coming to my office and making a statement on behalf of Bard and Keen. He went over that thoroughly, and, in talking to Mr. Whitney, he said that at the present time the films in question were in the possession of Bard and Keen, but that they could be had by their owners. I then saw Mr. Goldsmith. At that time he was trying another case in which I was the prosecuting attorney, and I told him what Mr. Whitney had said.

Mr. CARLIN. Do you know that that was the very thing that Mr. Wood was trying to get possession of when he represented those people as their attorney?

Mr. BROGAN. No; absolutely not. I understood that Mr. Wood had represented one client—one complainant by the name of the Crown City Co.; but that was only a very small part of the case. I want to make that point very clear.

Mr. CARLIN. What they wanted was possession of certain films or negatives, was it not?

Mr. BROGAN. No; Mr. Anderson said he did not care whether he got the films back or not. If a crime had been committed, he wanted to prosecute.

Mr. CARLIN. Did you know that Mr. Wood had tried to get the films back?

Mr. BROGAN. I know he had tried to get the films back for the Crown City; that is, one of the companies; but I want to make the point clear that we do not allow the district attorney's office to be

made a sort of collection agency—especially the commercial frauds bureau.

Mr. CARLIN. But you did take up this case?

Mr. BROGAN. I did.

Mr. CARLIN. After the Federal district attorney had determined, after full investigation and a reference of the matter to a referee, that no crime had been committed?

Mr. BROGAN. That is, no crime of a scheme to defraud by the use of the United States mails, but they still held—Mr. Anderson thought that grand larceny had been committed of these films, and that several indictments might be found.

Mr. CARLIN. You determined that no crime had been committed?

Mr. BROGAN. Yes.

Mr. CARLIN. And after that, you did submit witnesses to the grand jury?

Mr. BROGAN. Oh, no.

Mr. CARLIN. You submitted the witnesses before?

Mr. BROGAN. Yes, prior. The case has now been discontinued before the present grand jury.

Mr. CARLIN. It will be discontinued, regardless of what these men do with the property?

Mr. BROGAN. Regardless of whether they give the films back or not.

Mr. CARLIN. You did not have access to the minutes of the Federal grand jury at any time?

Mr. BROGAN. Absolutely not.

Mr. CARLIN. That is all, sir. We are very much obliged to you.

Mr. WALSH. I have several other questions.

Mr. CARLIN. Very well.

Mr. WALSH. Was any property belonging to Mr. David Keen turned over to you by the United States district attorney's office?

Mr. BROGAN. You mean books and papers?

Mr. WALSH. Yes.

Mr. BROGAN. Oh, yes; we have quite a little correspondence and books and records in the office.

Mr. WALSH. Where are they now?

Mr. BROGAN. They are in Mr. Dooling's office—in the district attorney's office.

Mr. WALSH. They have not been returned to Mr. Keen?

Mr. BROGAN. No.

Mr. WALSH. Can he get them if he comes there and demands them?

Mr. BROGAN. Oh, yes.

Mr. CARLIN. That is all, Mr. Brogan.

(Witness excused.)

Mr. CARLIN. Mr. Clerk, call Miss Marie Doran.

TESTIMONY OF MISS MARIE DORAN.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Miss DORAN. I reside at 186 Globe Avenue, Jamaica, Long Island.

Mr. WALSH. Miss Doran, what is your occupation, please?

Miss DORAN. I am a dramatist; writer for the professional stage.

Mr. WALSH. And you have been for some time, have you?

Miss DORAN. I have been writing for about 15 years. In that time I have produced a number of plays.

Mr. WALSH. Have you ever protected your productions by copyright?

Miss DORAN. I have deposited every play and obtained a copyright in the copyright office of the United States.

Mr. WALSH. Have you ever had any of your productions that were protected by copyright infringed upon?

Miss DORAN. A number of plays have been pirated, frequently; I may say, constantly, in different parts of the country.

Mr. WALSH. Have you made any effort to prosecute criminally any cases where plays of your production have been pirated?

Miss DORAN. I have filed complaints in the southern district of New York and elsewhere, charging violation of section 28 of the copyright act of March 4, 1909; that is, the criminal statute.

Mr. WALSH. That is, charging people with pirating your productions?

Miss DORAN. Yes. I have filed complaints in the southern district of New York and elsewhere, charging violation of section 28 of the copyright act of March 4, 1909, which is the criminal statute.

Mr. WALSH. In other parts of the country, have you had persons prosecuted criminally and punished criminally for pirating your productions?

Miss DORAN. Yes, sir.

Mr. WALSH. Have you ever made any complaint here in the southern district of New York against any particular persons for infringing the copyright?

Miss DORAN. I have had three complaints in the southern district.

Mr. WALSH. And in what cases—in what actions?

Miss DORAN. In March, 1912, a complaint against Paul Scott. Do you want his address?

Mr. WALSH. Yes.

Miss DORAN. 1402 Broadway, New York.

Mr. WALSH. And the other two, please?

Miss DORAN. In May, 1912, against William F. Burke, alias "Billy Burke," Tremont Theater, New York City; and against Earl D. Sipe, manager of the Winnifred St. Clair Stock Co.

Mr. WALSH. When did you make the complaint in the Sipe case?

Miss DORAN. In February, 1913.

Mr. WALSH. To whom did you make the complaint in the Scott case?

Miss DORAN. In the Scott case the complaint was made to former assistant, Herbert Gruber.

Mr. WALSH. That was in March, 1913?

Miss DORAN. In March, 1912.

Mr. WALSH. Mr. Marshall did not have charge of the office then?

Miss DORAN. Not at that time.

Mr. WALSH. Was Mr. Scott arrested at that time in consequence of the complaint you made then?

Miss DORAN. He was arrested—he was arraigned on March 28, 1912.

Mr. WALSH. Before whom?

Miss DORAN. The late Commissioner Shields.

Mr. WALSH. What was done, if anything?

Miss DORAN. The hearing—you mean the consequence—the result of the hearing?

Mr. WALSH. Yes; the result of the hearing?

Miss DORAN. The result of the hearing was the commissioner reserved decision and we were given to understand that the hearing would be continued, because as soon as the hearing adjourned I told Mr. Gruber that all the testimony submitted by the defendant and his witness, Jean Barrymore, was perjury from beginning to end.

Mr. WALSH. Can you tell us—just follow that case along, will you, in its different steps, without going into detail now. After Mr. Scott was brought before the commissioner what was done with the case? What was the next step in the controversy?

Miss DORAN. We had the hearing, as I have just described. Then, as I say, as soon as it was concluded I told Mr. Gruber that the testimony was all perjury.

Mr. WALSH. You have told us that. Now, tell us what the next step was? What happened to Scott, if anything?

Miss DORAN. We learned later that he had been dismissed.

Mr. WALSH. That the case had been dismissed?

Miss DORAN. Dismissed; yes.

Mr. WALSH. Did you take any action afterwards in reference to Scott?

Miss DORAN. I asked Mr. Gruber repeatedly to take up the charge of perjury against Paul Scott, and also a new charge of violation of the copyright law.

Mr. GARD. You say you asked Mr. Gruber?

Miss DORAN. Yes.

Mr. GARD. He was a former assistant district attorney?

Miss DORAN. Yes.

Mr. GARD. Not under Mr. Marshall?

Miss DORAN. He continued through some of Mr. Marshall's stay here.

Mr. WALSH. Did anybody at any time in Mr. Marshall's office while Mr. Marshall was the district attorney have anything to do with the Scott case?

Miss DORAN. Yes.

Mr. WALSH. Who?

Miss DORAN. Mr. Marshall and Mr. Content.

Mr. WALSH. Tell us what Mr. Marshall had to do with the Scott case, if you will?

Miss DORAN. Well, after I had complained repeatedly about the perjury committed in the Scott case I could not induce Mr. Gruber to continue the charge, so I wrote to Mr. Marshall and asked him to take up that charge and prosecute Paul Scott for perjury and conspiracy.

Mr. WALSH. Have you that letter?

Miss DORAN. No; I do not think I have here, but I have a reply from Mr. Marshall, but that I seem to have overlooked. I can supply it, if the committee wants it.

Mr. WALSH. Mr. Marshall did reply to that letter, did he?

Miss DORAN. Not at that time.

Mr. WALSH. Did he, subsequently?

Miss DORAN. He did later.

Mr. WALSH. Was any investigation made in regard to your charge of perjury against Scott by the district attorney's office?

Miss DORAN. That charge and other charges were investigated through the department at Washington. I do not know of any investigation that was made here.

Mr. WALSH. How did the matter come before the department at Washington?

Miss DORAN. I had complained of the refusal of this southern district to prosecute Paul Scott and Billy Burke and Earl Sipe. I complained to President Wilson. The President evidently referred the complaint to the department, and that traveled back to the southern district, with the result that the department at Washington sent over a special examiner, Mr. M. C. Masterson.

Mr. WALSH. Did Mr. Masterson, to your knowledge, make an investigation of your complaints?

Miss DORAN. Yes.

Mr. WALSH. And what was done with them in the district attorney's office?

Miss DORAN. He did.

Mr. WALSH. What was his report on that? Do you know?

Miss DORAN. He said that we would never know the result of his investigation.

Mr. WALSH. So that you do not know what the result of his investigation was?

Miss DORAN. I do not know; not any more than what he told me—a few remarks.

Mr. WALSH. Did you at any time see Mr. Marshall and have any talk personally with him about your complaints?

Miss DORAN. I never saw Mr. Marshall in my life.

Mr. WALSH. Did you make any effort to see him?

Miss DORAN. I called repeatedly.

Mr. WALSH. Where?

Miss DORAN. In this building.

Mr. WALSH. Did you ask to see Mr. Marshall?

Miss DORAN. Yes.

Mr. WALSH. What were you told?

Miss DORAN. I was told he was too busy to see me.

Mr. WALSH. How about the Burke case? Was there anything special about that that Mr. Marshall's office was connected with?

Miss DORAN. William Burke was arrested on or about May 3, 1912. We had the first hearing in June, 1912, before Mr. Alexander Gilchrist. I believe he was sitting as a special commissioner. The hearing was adjourned to July 11, 1912, when the defendant admitted his guilt, and his confession was corroborated by his own witnesses, with the result that Mr. Gilchrist held him for the grand jury.

Mr. WALSH. Was he ever brought before the grand jury?

Miss DORAN. I appeared before the grand jury on April 2, 1913. Mr. Charles Griffiths, who was also a former assistant district attorney, was in charge of that complaint.

Mr. WALSH. That was during Mr. Marshall's time, was it?

Miss DORAN. In April, 1913.

Mr. WALSH. What was the result of that?

MISS DORAN. I went before the grand jury, and I may say that he did not proceed in the manner in which district attorneys have proceeded when I complained in other districts. He did not take a bill into the grand-jury room, but he introduced me to the grand jury and asked that they consider the evidence. We read the play, and it proved to be an exact copy of my play, which William F. Burke had sold me personally, with his name on it as the author.

MR. WALSH. What did you do? Did you go and buy a copy of your own play?

MISS DORAN. I bought a copy for \$5 with the right to produce my own play forever.

MR. WALSH. Was an indictment found in that matter?

MISS DORAN. I learned, when I went to Washington in 1915, Mr. Ramsey, head examiner in the department, told me that an indictment had been found in the Burke case. Up to that time Mr. Griffiths and every person I asked in this department, including the criminal bureau, told me there was no indictment. Mr. Masterson, when he was here, I asked him, I said, "What game are they playing in this Burke case?"

MR. WALSH. We can not go into that.

MISS DORAN. Well, he said that something had happened between the time Burke was held and the time I appeared before the grand jury.

MR. WALSH. Mr. Burke was never presented or never prosecuted before a court?

MISS DORAN. He was never prosecuted.

MR. WALSH. What about Mr. Sipe? What about that case?

MISS DORAN. Mr. Sipe was arrested on or about March 1, 1913. He was arrested at Middletown, Conn. It appeared that he waived examination and asked that the hearing occur in New York. The violation occurred at Newburgh, N. Y. That was in March, 1913. I asked Mr. Gruber to proceed with the prosecution. He always gave me an evasive reply. It drifted along until the summer of 1913, and on July 15 I called and asked for Mr. Marshall. I was told he was too busy to see me. Then I asked for Mr. Gruber. I was told that he was absent. Then I went to the criminal bureau, and I asked if anything had been done in the Sipe case. They said nothing further than the arrest.

The next day, July 16, I wrote a letter to Mr. Marshall, of which there is a copy here, calling his attention to the situation, and a day or two later I received a reply from Mr. Marshall saying that he would give it his attention. That was in July. I heard nothing more. On September 7 I wrote again to Mr. Marshall, asking him if he would please proceed with that prosecution. I received no reply. I waited a few days, and in October—I think October 13—I addressed a complaint to President Wilson.

MR. WALSH. Now, in consequence of that, what happened here in New York, or what happened to the complaint against Mr. Burke or Mr. Sipe?

MISS DORAN. We received word—it was a printed slip, filled in, from Mr. Edwin Stanton, an assistant district attorney—to call in reference to this complaint—the Sipe case. We called, in October—I think, about the latter part of October.

MR. WALSH. What year, please?

MISS DORAN. That was 1913.

MR. WALSH. What happened to the Sipe case? Was he prosecuted?

MISS DORAN. A hearing was set for November 18, 1913, and that hearing occurred before the late Commissioner Shields.

MR. WALSH. What was the result of that hearing?

MISS DORAN. Mr. Sipe took the stand and admitted his guilt. He said he very much objected to being prosecuted, and he offered to settle the royalties. Mr. Roger Wood was in charge of that hearing. Mr. Wood called me around to the side of the desk and he said, "Are you willing to dismiss this complaint, if he pays you the royalties?" I said, "I do not think it is proper for you to make this department a collection agency. He has admitted his guilt, and he should be indicted." Well, he said, "What is the use of going ahead with it, if you can get your money?" I said, "I can collect my money in a civil action. It is not for this department to take that action." He said, "Well, I am going to recommend to the commissioner that we parole him and give him an opportunity to pay the royalty, and you should consent to a dismissal." Commissioner Shields favored the plan. He said, "I will consider that proposition of the district attorney." I said, "If you two gentlemen decide that way, I am helpless. I will have to accept what you say."

MR. WALSH. Was that the final disposition of the Sipe matter?

MISS DORAN. That was the disposition of the Sipe case.

MR. WALSH. Have you correspondence there concerning these cases, with the different persons you have mentioned?

MISS DORAN. Yes.

MR. GARD. Referring to that Sipe case, you say "That was the disposition of it." Do I understand that after Mr. Wood said that he would be paroled, that there was an indictment, and that he was paroled under that indictment?

MISS DORAN. No, Mr. Chairman. He paroled him, it appears. The bail had been dismissed long before he was arraigned, but he paroled him for 30 days in order to give him an opportunity to make his payment of the royalties, so he did parole him for 30 days, and just before the time expired Mr. Sipe communicated with me and we arranged a settlement. Then I subsequently learned from Mr. Sipe that he came here and was formally dismissed.

MR. GARD. You and Mr. Sipe arranged a settlement?

MISS DORAN. Yes.

MR. GARD. A financial settlement?

MISS DORAN. A financial settlement, with the consent of the district attorney.

MR. GARD. Was it a settlement in full, or a compromise settlement?

MISS DORAN. I made a bill, and he paid it.

MR. GARD. He paid it as you made it out?

MISS DORAN. He paid it as I made it.

MR. GARD. When did you make that bill?

MISS DORAN. After the hearing.

MR. GARD. After the authorized parole?

MISS DORAN. Yes; after the authorized parole.

MR. GARD. After they said they would let him out on parole, then you made out a bill?

Miss DORAN. Then I made my charge; I sent him a bill what the consideration would be.

Mr. GARD. And that bill, as you made it out, the amount of that was paid?

Miss DORAN. The amount of that was paid; yes.

Mr. GARD. I am not concerned in the amount. I just wanted to know whether there was any compromise.

Miss DORAN. No.

Mr. GARD. The amount you made out was paid?

Miss DORAN. Yes.

Mr. WALSH. Were Mr. Burke and Mr. Scott represented by attorneys?

Miss DORAN. Yes.

Mr. WALSH. Who were their attorneys?

Miss DORAN. The same attorney; August Dreyer, 154 Nassau Street, New York.

Mr. WALSH. Is your correspondence arranged there chronologically so that it will tell the story itself in regard to these cases?

Miss DORAN. Yes; it is.

Mr. WALSH. You are willing to leave this with the committee, are you?

Miss DORAN. I am.

Mr. NELSON. This deals entirely with H. Snowden Marshall?

Miss DORAN. That deals entirely with him; yes.

Mr. WALSH. I think you are in error there. Does it not deal with the whole transaction?

Miss DORAN. It deals with the complaints; yes.

Mr. WALSH. Some of it was before Mr. Marshall came into office, was it not?

Miss DORAN. Yes; but the complaints continued over.

Mr. NELSON. Will you sift it out so that we may have only that which deals with Mr. Marshall?

Miss DORAN. I have sifted it out. I have tried to leave only what would further this investigation.

Mr. NELSON. We do not want to read any more than we have to.

Miss DORAN. I do not want to ask you to.

Mr. WALSH. I think that will be all.

Miss DORAN. May I tell about my visit to Washington?

Mr. GARD. You may make any statement you desire to make.

Miss DORAN. In February, 1915, I went to Washington for the express purpose of asking the Attorney General if he would compel H. Snowden Marshall to hear my complaints, and proceed with these prosecutions.

Mr. GARD. February of what year?

Miss DORAN. February 2, 1915. There is a letter there from Mr. Warren, whom I met, which will verify the visit. I charged the district attorney had discriminated against me in this district, he had prosecuted other persons charged with violations of the copyright act, but I could not get a prosecution. So I first met Mr. Ramsey, head examiner, and I said we never knew what happened as a result of Mr. Masterson's very lengthy investigation. He said, "Why, Burke was indicted." I said, "There is no record of it in the criminal bureau." He said, "I will take you to Mr. Warren—Mr. Charles Warren—he knows this case." He took me to Mr. Warren.

I said, "I come here asking you if you will instruct Mr. H. Snowden Marshall to proceed with the prosecution of William F. Burke and Paul Scott." Mr. Warren said, "I shall not interfere with the district attorney of New York or elsewhere." I said, "Do you mean that H. Snowden Marshall is a law unto himself, and that he can openly pick and choose what statutes he will enforce?" He said, "I mean I will not interfere with him." He said, "You need not have come to Washington looking for justice." I said, "I realize that I can get all the injustice I can stand in New York," and I came away from the office. This year, in January, 1916, I hunted up one of the jurors who was present on April 2 when I appeared and testified before the grand jury in the Burke case. That was Mr. Percy E. Williamson, Flatiron Building, New York. I asked Mr. Williamson if he remembered me as a witness before that body, and the testimony I gave in the Burke case. He said, yes; he did. I said, "Do you recall what the deliberation of the grand jury was?" He said, "Yes, I remember; my recollection is that we voted a true bill." I said, "What became of the indictment?" He said, "You better see the foreman of the grand jury; he may be able to tell you." I said, "The indictment never got out of the grand jury room." I wrote twice to Mr. David Weissenberger—his address is on the record there—he was the foreman of the grand jury. He did not reply to either letter. That brings it up to the present time.

Mr. WALSH. There is not anything further you want to tell the committee?

Miss DORAN. You do not want hearsay evidence of what has been said, do you?

Mr. GARD. The committee will hear any statement that you desire to make, which will give us any light on the matter which you seek to bring to our attention.

Miss DORAN. Weil, in February, I think it was, or March, of last year, 1913, I asked my brother, Frank Doran, to call on Mr. Content and say that we had been told in Washington that there was an indictment in the Burke case, and what did he mean by calling me in to investigate the Burke case and telling me that there had been no indictment, putting me to the trouble of telling this situation over and over, when he knew that this man could not be jeopardized a second time; and it seems that Mr. Content flew into a great rage, and my brother came back and said "Mr. Content says you can go to hell and the President can go to hell and the Government can go to hell." "He does not want to hear anything more about you."

Mr. GARD. Who is Mr. Content?

Miss DORAN. He is an assistant district attorney.

Mr. GARD. Is there anything else you desire to say?

Miss DORAN. Mr. Content took up the reopening of the Burke case on October 10, 1914, and led me to believe that he was going to represent the Burke case to the grand jury—spent a great deal of time on it—then I received a letter from Mr. Marshall, which letter is with this file, saying that he would not reopen the Burke case and returned my exhibits. I think that is all, Mr. Chairman.

Mr. GARD. My understanding is that you are a broker in plays?

Miss DORAN. No; I am the author of these plays.

Mr. GARD. You are the author?

Miss DORAN. Yes.

Mr. GARD. Do you sometimes buy plays, too, from other persons?

Miss DORAN. No; I do not deal in anything but my own property.

Mr. GARD. You write the plays?

Miss DORAN. I write them.

Mr. GARD. And seek to protect them by copyright?

Miss DORAN. By copyrighting them.

Mr. GARD. I understand that you communicated, or, rather, this committee earlier in the year was given a letter from you, with a statement, under date of January 3, 1916, which you sent to Mr. Buchanan, a Member of the House of Representatives?

Miss DORAN. Yes.

Mr. GARD. You remember that, do you?

Miss DORAN. Yes; I remember that.

Mr. GARD. And also before the committee, there was a copy of your statement to the President of the United States, of date November 24, 1914?

Miss DORAN. Yes; that is correct.

Mr. GARD. Those matters were before the committee. The committee has all that, and, as I have stated, if there is any other information you desire to give, we will be very glad to hear it.

Miss DORAN. I do not think I can tell you anything more.

Mr. NELSON. How do you account for the discrimination to which you think you have been subjected by this office? A mere carelessness—this is a conclusion on your part, but I just want to get your attitude of mind so I will understand the situation?

Miss DORAN. I can only quote from what Mr. Masterson said. I asked him that question. I said, "Why am I discriminated against? I go in there simply as a citizen, asking for the administration of the law, as anyone else might, and I do not get any justice." I said, "What did Mr. Gruber mean by keeping me running in there for nearly a year, taking up my time in interviews, and nothing happened?" He said, "Well, Mr. Gruber admits that he wanted to tire you out, so that you would not bother them with any more complaints."

Mr. NELSON. Have you any knowledge of them being interested in either or both of these other persons in any way?

Miss DORAN. I do not know that they were.

Mr. NELSON. Had they any business relations with them, to your knowledge?

Miss DORAN. That I do not know.

Mr. NELSON. Are they in any friendly or social relations with them?

Miss DORAN. I know, way back in 1908, I went through injunction proceedings to protect one of the plays involved in these complaints, and it was the Theatrical Trust, so called, that brought the action against me, and I succeeded in winning over them, and they have chosen to persecute me since that time. I do not know whether that bears on it or not.

Mr. NELSON. Have you any knowledge of any influence back of the office that has led them to discriminate against you, as you have intimated?

Miss DORAN. I can not say that I have any positive knowledge.

Mr. NELSON. Then, may it not be simply that they think there is nothing to your case?

Miss DORAN. They never told me that there was no evidence; they simply did not proceed, even after the arrests.

Mr. NELSON. What reason did they give you for not wanting to proceed?

Miss DORAN. They never gave me any reason.

Mr. NELSON. No reason?

Miss DORAN. I asked Mr. Warren—I recall that I asked him at Washington if he would ask Mr. Marshall why he would not present that case of Burke to the grand jury and prosecute him, inasmuch as the man had admitted his guilt; he did not lie; he admitted it, and his own witnesses corroborated it.

Mr. NELSON. How many cases of yours—

Miss DORAN (interposing). Three.

Mr. NELSON. How many plays of yours have been pirated?

Miss DORAN. There are two plays involved in these complaints.

Mr. NELSON. What are the names of the plays?

Miss DORAN. "Tempest and Sunshine" is one, and "Lena Rivers" is the other. Mr. Warren told me—he said, "To satisfy you, I will ask Mr. Marshall what his reason is for refusing to prosecute."

Mr. NELSON. And what did he say?

Miss DORAN. I said, "If Mr. Marshall will tell me, or if you will tell me, that I have no evidence, that I can not obtain evidence, or that I have no witnesses, that will satisfy me, and I will be glad to know it." He said, "I will write you." This interview was at Washington. About two or three days later, when I returned from Washington to my home, I received a letter from Mr. Warren, in which he said he would not ask the district attorney—

Mr. NELSON (interposing). He would not?

Miss DORAN. He would not ask him, and he did not ask him, and I never knew.

Mr. NELSON. Is that covered in the correspondence here?

Miss DORAN. I am not sure that it is there, but I can supply it if it is missing.

Mr. NELSON. No; it is not necessary. That is all.

Mr. GARD. Has anyone represented you in a legal way in these controversies that you have had?

Miss DORAN. Anyone represented me?

Mr. GARD. Yes.

Miss DORAN. No.

Mr. GARD. As a lawyer?

Miss DORAN. No.

Mr. GARD. Who represented you in the injunction proceeding that you say you had with the so-called Theatrical Trust?

Miss DORAN. That was a man by the name of James Foster Miliken.

Mr. GARD. In the other instances when you presented matters to the district attorney's office you had no legal advice?

Miss DORAN. No legal advice. I understood that a personal attorney had no standing.

Mr. GARD. I am merely asking you whether you had legal advice.

Miss DORAN. No; I had not.

Mr. GARD. How many complaints have you made outside the jurisdiction of the southern district of New York to Federal grand

juries or Federal prosecuting officers on matters in which you were interested?

MISS DORAN. I made a complaint in the northern district of Ohio in March or April of last year. Do you want to know the result of that?

MR. GARD. Yes; I would like to know the result; how many complaints you had made.

MISS DORAN. Then I made another at Asheville, N. C. The result of the Ohio prosecution was a conviction on a plea of guilty in which the Government recovered the fine and costs. The North Carolina prosecution is pending. We have not yet reached the trial—can not reach it before next month. I made another complaint at Wichita, Kans., and the subpoena for my appearance before the grand jury at Wichita was made returnable on March 8, 1915. It seems that all the subpoenas that come to me come through the eastern district of New York, which is Brooklyn; but in the case of Kansas there was a witness subpoenaed through the southern district of New York. That witness was not willing to make the trip to Kansas, and he told me that he called here and asked Mr. Marshall—saw Mr. Marshall personally and asked him—what he might do to be excused and that Mr. Marshall advised him to write and explain to the district attorney in Kansas that he wanted to be excused and that he had no evidence that would aid the prosecution. The result of the Kansas matter is that about 48 hours after I was served with a subpoena it was canceled by telegraph, and the district attorney has refused to proceed with that prosecution.

MR. GARD. That is the district attorney in Kansas City?

MISS DORAN. In Kansas.

MR. GARD. In Kansas?

MISS DORAN. Wichita, Kans.

MR. GARD. Have you had any other matters before Federal grand juries, except the ones in Ohio, North Carolina, and Kansas?

MISS DORAN. We had an injunction in Boston.

MR. GARD. You say, "We had." Whom do you mean by "we"?

MISS DORAN. I mean myself.

MR. GARD. Is there anybody else associated with you?

MISS DORAN. Only my brother is associated with me, and I have gotten into the habit of saying "we."

MR. GARD. I did not know but what you had a firm or company in the control of these plays.

MISS DORAN. No; not at all. I am working alone.

MR. GARD. These other prosecutions all related to the same plays, "Tempest and Sunshine" and "Lena Rivers"?

MISS DORAN. Yes; the two plays.

MR. GARD. They all relate to the same alleged infringement?

MISS DORAN. Yes.

MR. GARD. How long have these plays been published by you?

MISS DORAN. "Lena Rivers" is not published; it is held in manuscript form. The play was originally produced in 1907. "Tempest and Sunshine" was produced in 1908, and it was published in 1913.

MR. NELSON. Have you presented this matter to any attorney and gone over your rights under the law with him?

MISS DORAN. No; I have not.

Mr. NELSON. You have never consulted anyone as to your legal rights in the matter, outside of the efforts you have made before the Department of Justice?

Miss DORAN. No, sir; I have not. The copyright law provides a civil penalty, but these men against whom I have made charges are so irresponsible that I would not be able to collect in a civil action.

Mr. NELSON. In the cases stated they had been pirated?

Miss DORAN. They were complete copies, word for word, in the Scott case and also in the Sipe case.

Mr. WALSH. Miss Doran, could you get any better proof or evidence of the violation of your copyright than you have done when went out and bought your own production and paid \$5 for it?

Miss DORAN. Why, the admission of the defendant and the admission of his own witnesses.

Mr. WALSH. Did anybody at any time in the district attorney's office say your evidence was not sufficient to prosecute in those cases?

Miss DORAN. Mr. Marshall said so.

Mr. WALSH. He did tell you so?

Miss DORAN. Yes; in his letter.

Mr. WALSH. In his letter?

Miss DORAN. Yes.

Mr. GARD. I think that is all. Notify the other witnesses, Mr. Clerk, to return at 2 o'clock. The committee will recess until 2 o'clock.

(Whereupon, at 1.15 o'clock p. m., the subcommittee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The subcommittee reconvened, pursuant to the taking of recess, at 2 o'clock p. m.

Mr. CARLIN. The committee will come to order. Is Mr. Wood here?

TESTIMONY OF ROGER B. WOOD.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Please give the stenographer your name, address, and professional occupation.

Mr. WOOD. 308 West Fifteenth Street, New York City; attorney at law.

Mr. CARLIN. Mr. Wood, have you had any conversation with anybody as to what your testimony should or should not be before this committee?

Mr. WOOD. I have not, sir.

Mr. CARLIN. With your superior officer, Mr. Marshall?

Mr. WOOD. I have had some instructions from Mr. Marshall.

Mr. CARLIN. Were they written?

Mr. WOOD. No, sir.

Mr. CARLIN. Then, was it by way of conversation?

Mr. WOOD. Yes, sir.

Mr. CARLIN. What were your instructions?

Mr. WOOD. My instructions were not to answer any questions with respect to the committee with regard to any matters that occurred in the grand jury room.

Mr. CARLIN. As part of your duties, do you have charge of the criminal department of the district attorney's office?

Mr. WOOD. I do, sir.

Mr. CARLIN. Then you have charge of the assignment of the assistants to the grand jury room?

Mr. WOOD. No, sir.

Mr. CARLIN. Who has?

Mr. WOOD. No one. Each assistant takes charge of his own case and presents the matter to the grand jury. When a written complaint comes in to me I assign it to an assistant and he takes charge of the case from then on.

Mr. CARLIN. Then you, in practice and in fact, do have the assignment of the assistant that has charge of the grand jury room?

Mr. WOOD. Of that particular case; yes, sir.

Mr. CARLIN. Did you have charge of the assignment in the matter of the indictment of Lamar, Martin, and others?

Mr. WOOD. I did not, sir. I was away on a vacation when that matter arose and knew nothing about it.

Mr. CARLIN. Who made that assignment?

Mr. WOOD. I have not an idea, sir, unless it was Mr. Marshall. I think I have heard that he did.

Mr. CARLIN. Were you away all of the time that case was pending?

Mr. WOOD. No, sir; I was away during the month of September. It broke in the month of September.

Mr. CARLIN. Well, did Mr. Sarfaty report to you at any time while this proceeding was pending before the grand jury?

Mr. WOOD. From time to time I had conferences with Mr. Sarfaty, Mr. Marshall, and the Chief of the Bureau of Investigation.

Mr. CARLIN. Are you familiar with the evidence in that case?

Mr. WOOD. Only in a general way. I did not have the details of it at all.

Mr. CARLIN. Are you familiar with the indictment in the case of Rae Tanzer?

Mr. WOOD. I was; yes, sir.

Mr. CARLIN. Were you familiar with the indictment in the case of Oppenheimer?

Mr. WOOD. I was familiar with that in a way. I was in pretty close touch with that case. I did not present any of the evidence to the grand jury. Mr. Hershenstein was in active charge of the case.

Mr. CARLIN. Did you have charge of the Kugel case?

Mr. WOOD. I had charge of the trial and some part of the preparation of that case. I did not present that case to the grand jury.

Mr. CARLIN. Did you have any connection with the warrant issued against David Keen?

Mr. WOOD. That complaint came in, sir, without my knowledge. It was a verbal complaint. I did not know it was in the office until it had been in the office several days; I was then told by Mr. Hershenstein that there was such a case in the office. I immediately told Mr. Hershenstein that he must be very careful with that case and not proceed, unless he was sure he had a perfectly good case. I told him also that we must have a written complaint and I did not know the complainants or their attorneys, except in a general way.

Mr. CARLIN. Why did you take that precaution in that case?

Mr. WOOD. I did, sir, because I had a little matter with Bard & Keen some time prior to that, and I wanted to be perfectly sure the matter was properly attended to.

Mr. CARLIN. What was the little matter you had with them?

Mr. WOOD. In the early part of November, I think perhaps about the 12th of November—

Mr. CARLIN. What year was that?

Mr. WOOD. Nineteen hundred and fifteen, an old college mate of mine from Colorado Springs wrote me, saying that Bard & Keen had some films belonging to his client and owed them some money, and Mr. Smith, their representative, called to see me and asked me if I would not come up and see them and see if I could not get this property back. I told him I would. We fixed the day—I think it was Saturday morning. We went there about half after 9 in the morning. I saw Messrs. Bard & Keen and asked them how much they owed these people. They said they didn't know; they would have to look at the books. I said "where are their films?" They said they didn't know, they were somewhere, and I saw that there was not any hope of getting this property, and I told them I would have to see what proceedings could be taken to recover the property, and left.

Mr. CARLIN. Right there, did you tell Mr. Keen that you were the assistant district attorney?

Mr. WOOD. I did not, sir. I said, "I am Mr. Wood, an attorney, representing the Pike's Peak Film Co."

Mr. CARLIN. You never told them that you were engaged with the district attorney's office or connected with it?

Mr. WOOD. I never did, sir. After that I came to my office and sent for Judge Henry—

Mr. CARLIN (interposing). Just one minute. In the conversation that you refer to—between Mr. Keen and yourself—is that the only conversation you had with him?

Mr. WOOD. Yes; that is the only time I ever saw him, until after these matters broke in this office.

Mr. CARLIN. Did you tell him he would have to give up that property?

Mr. WOOD. I did not. I told him I would have to see what proceedings could be taken to recover that property.

Mr. CARLIN. Are you sure you did not tell him that you were the assistant district attorney?

Mr. WOOD. I am absolutely positive of it.

Mr. CARLIN. Do you remember saying to him, "Well, if you don't give up this property, I will get you"?

Mr. WOOD. No; I never said any such thing.

Mr. CARLIN. Were you retained as counsel in that case?

Mr. WOOD. No, sir; I have never gotten any retainer. I did it for Mr. Alfred Ritter, an attorney in Colorado Springs, who was my roommate at the University of Virginia. I have never gotten 1 cent, sir; no fee at all. In fact I spent some little money in matters I did for that company and have never been reimbursed for that.

Mr. CARLIN. Did you make any demand for reimbursement?

Mr. WOOD. No, sir; I haven't. It was a small amount.

Mr. CARLIN. Then, you appeared there as much an assistant district attorney as you did as a private counselor?

Mr. WOOD. No, sir; I appeared there as private counsel. It was no part of my duty to act as an assistant district attorney.

Mr. CARLIN. You say you were not employed as counsel?

Mr. WOOD. I had been asked to look after this matter by Mr. Alfred Ritter.

Mr. CARLIN. In what capacity were you asked to look after it?

Mr. WOOD. As private counsel.

Mr. CARLIN. Do you have the right to practice privately in your profession?

Mr. WOOD. Yes, sir; I understand the Supreme Court has so decided.

Mr. CARLIN. Where is that decision?

Mr. WOOD. I can not, offhand, give it to you, but I can furnish the committee with it.

Mr. CARLIN. Do the other assistants here have an opportunity to practice their profession privately?

Mr. WOOD. Yes, sir; and I understand the United States attorney has the right to practice privately.

Mr. CARLIN. What chance do you have for practicing privately?

Mr. WOOD. I have a little.

Mr. CARLIN. How many hours do you give to your duties here?

Mr. WOOD. Say from half after 9 in the morning till 5 o'clock in the evening, and sometimes until midnight or 1 o'clock at night.

Mr. CARLIN. If you can find time during that period to practice your profession, you do it?

Mr. WOOD. I do not find any time to do it.

Mr. CARLIN. What time of day did you call on Mr. Keen?

Mr. WOOD. I think about half after 9, on Saturday morning.

Mr. CARLIN. Was that before you reported for duty here?

Mr. WOOD. Yes.

Mr. CARLIN. How long were you there with him?

Mr. WOOD. I should say 10 or 12 minutes; something of that sort.

Mr. CARLIN. Well, Mr. Keen was afterwards arrested on a warrant, issued out from the district attorney's office, was he not?

Mr. WOOD. He was.

Mr. CARLIN. Do you know whether they tried to get him at 12 or 1 o'clock at night?

Mr. WOOD. I have no idea about that at all, sir.

Mr. CARLIN. Do you know what time they arrested Mr. Bard?

Mr. WOOD. I do not, sir.

Mr. CARLIN. Do you know whether they kept him in jail all night, waiting to give bond?

Mr. WOOD. I do not, sir. Those are details that I am not at all familiar with. I had nothing to do with the case after I came back from that interview. Within a day or two I turned over all of the papers I had to Judge Henry W. Unger, a very prominent attorney in this city, and told him I would like to have him look after the matter, that I could not attend to it.

Mr. CARLIN. Why could you not attend to it?

Mr. WOOD. It involved probably the bringing of a suit in conversion, or something of that sort, and I did not have any opportunity to do that?

Mr. CARLIN. A suit in what?

Mr. WOOD. Suit in replevin; and I did not have time to bring lawsuits. I have not brought any suits since I have been in the office. I have no office to carry on a lawsuit and, therefore, I thought it better to turn it over to somebody else.

Mr. CARLIN. You have not brought any suits since you have been in the district attorney's office?

Mr. WOOD. I have not, sir.

Mr. CARLIN. Is this the only case in which you have been employed?

Mr. WOOD. No, sir. I tried one other case, a civil suit.

Mr. CARLIN. Have you declined any others?

Mr. WOOD. Well, I have not declined any. I have not been offered any, but everybody knows I have not time to take up that business.

Mr. CARLIN. You accepted all that was offered you?

Mr. WOOD. Well, I can not say that I have. I have turned down some little business that did not appeal to me and that I did not care about.

Mr. CARLIN. Well, now, why did you especially advise your subordinate to be particularly careful in this case?

Mr. WOOD. Well, sir, because I had been retained in that matter, and I did not want the suspicion to come about that any proceedings taken in this office were due to anything I had to do with. That is the reason.

Mr. CARLIN. Why did you not think of that before you accepted the employment?

Mr. WOOD. Well, I had not anticipated there would be any complaint in this office at all about it. I could not anticipate that.

Mr. CARLIN. Well, you might have anticipated it would have been your duty, as counsel to your client, to have set in motion such a proceeding.

Mr. WOOD. Well, sir, but I turned the whole matter over to Judge Unger, to do as he saw fit to do with the matter. I had nothing more to do with it, after my interview with Bard & Keen, and I had absolutely nothing more to do with it. I turned everything over to Judge Unger to look after.

Mr. CARLIN. Did you report to Mr. Marshall, either before or after this warrant was sworn out, your connection with the matter?

Mr. WOOD. I made a full and complete statement, as soon as I heard the question had been raised.

Mr. CARLIN. You did not tell him until after the question was raised?

Mr. WOOD. Just as soon as I heard that some such question was raised I went right into Mr. Marshall.

Mr. CARLIN. Where did you hear the question was raised, before Mr. Marshall?

Mr. WOOD. No, sir; I think Mr. Hershenstein came in and said Mr. Wise said something about it.

Mr. CARLIN. Said something to him?

Mr. WOOD. I think probably to him. I don't know about that.

Mr. CARLIN. What did you hear Mr. Wise had said about it?

Mr. WOOD. He said that his client said that this prosecution started because of the fact that I had been involved in some civil litigation with them, and it was malicious, or some such thing as that.

Mr. CARLIN. Well, did Mr. Hershenstein follow out your instructions and exercise extraordinary care and precaution?

Mr. WOOD. I would not like to say that he did not, because he told me—I told him in the presence of the complainants and their counsel that there would be no proceedings in this matter, unless it was an absolutely good case and that the matter must not be settled; if there was any effort to settle this matter of their claims through the process of the functions of the Government of the United States, it would be kicked out; I told it in the presence of Mr. Frederick I. Goldsmith and the stenographer downstairs and the complaining witness.

Mr. CARLIN. Why did you want to tell him that? Did you think that was probably the effort—

Mr. WOOD. No; but that is sometimes done. The effort is sometimes made to use the office as a collecting agency, and one of our strictest rules is that that should not be done.

Mr. CARLIN. If that is a strict rule, there was not any necessity for your calling his special attention to it.

Mr. WOOD. Yes, there was; because there was a personal element in it, that I had been involved in this other matter with them.

Mr. CARLIN. Still there was a rule of the department for his guidance without giving him special instructions?

Mr. WOOD. Yes; but I wanted to specially emphasize it in this particular case.

Mr. CARLIN. You were afraid he might overlook the rule?

Mr. WOOD. No; but I wanted to be sure that he observed it.

Mr. CARLIN. Well, as a result of his investigation, you do know that he had warrants issued for Keen and Bard?

Mr. WOOD. Yes, sir.

Mr. CARLIN. And you specially cautioned him against issuing the warrants, unless he was certain he had a good case?

Mr. WOOD. Yes, sir.

Mr. CARLIN. Do you know that the matter was afterwards referred to a referee to determine whether he had a good case or not?

Mr. WOOD. I do, sir.

Mr. CARLIN. Do you know what the referee determined?

Mr. WOOD. I do, sir.

Mr. CARLIN. What did he determine?

Mr. WOOD. He determined that the matter, in his opinion, was not within the spirit of section 215 of the Criminal Code.

Mr. CARLIN. Did he not determine that it was not a good case?

Mr. WOOD. I don't—he determined that it was not a good Federal case under 215.

Mr. CARLIN. Mr. Hershenstein had, in view of your special caution, determined that it was a good case?

Mr. WOOD. He thought it was a good case.

Mr. CARLIN. And the referee determined it was not a good case?

Mr. WOOD. Exactly so, sir.

Mr. CARLIN. So the net result is that either Mr. Hershenstein disregarded your instructions or misunderstood them or was mistaken as to the law and facts?

Mr. WOOD. He may have been. He may have been mistaken as to the facts.

Mr. CARLIN. What, if anything, did you have to do with getting the district attorney of the county of New York to take this matter up?

Mr. WOOD. I spoke to Mr. Marshall about that matter. I asked him if this was a good case for the State authorities and he thought it was. Well then, I said, "Ought we not to send it there," and he said, "Yes," and then we called Mr. Wise up and told him that the papers were to go to the district attorney, and Mr. Wise said, "All right."

Mr. CARLIN. Well, now, why did you feel it your duty to speak to Mr. Marshall about the matter after it had been closed in your own office under the decision of the referee? What did you have to do with it then?

Mr. WOOD. I only thought, sir, if there had been a violation of the law and these men had done wrong that there ought to be some redress for the wrong.

Mr. CARLIN. Is it any part of your duty to look after violations of the State and municipal laws?

Mr. WOOD. No, sir; but when there is a violation that we can not take care of we send it to the State authorities, and when there is a violation that they can not take care of they send it to us.

Mr. CARLIN. So if it becomes improper for you to take care of a violation here you can by arrangement send it down there?

Mr. WOOD. Not exactly improper, but if there may be a violation of the State law and not a violation of the Federal law, then it is proper for them to take notice of it.

Mr. CARLIN. Why did not you beforehand exercise that discretion and judgment in determining that it was a violation of the State law and send it there in the beginning?

Mr. WOOD. Because it was not my case.

Mr. CARLIN. It was not your case at any time of the proceeding, was it?

Mr. WOOD. No, sir.

Mr. CARLIN. Then it was just as much your case in the beginning as at the time you did do it?

Mr. WOOD. No; if the case had come into the office by a written complaint and I had taken it up to investigate I would have been the one to determine where the prosecution ought to be started.

Mr. CARLIN. It did not come that way?

Mr. WOOD. No; came by a verbal complaint.

Mr. CARLIN. Therefore you had nothing to do with the case?

Mr. WOOD. No, sir.

Mr. CARLIN. Yet you did make it your business to go to Mr. Marshall and call his attention to the fact that it might be a violation of the State law?

Mr. WOOD. No, sir. I said, "Are you gentlemen agreed there was a violation of the law?" He thought there was.

Mr. CARLIN. You say the case was not before you?

Mr. WOOD. It was not before me, but it was in the office, and some disposition had to be made of it.

Mr. CARLIN. It had been disposed of, had it not, as far as your office was concerned?

Mr. WOOD. Yes, sir; the grand jury had failed to find a bill.

Mr. CARLIN. But the referee had failed to find any violation of the law, too, had he not?

Mr. WOOD. The Federal law; yes, sir.

Mr. CARLIN. Notwithstanding the action of the grand jury, and notwithstanding the decision of the referee, you still felt this office would not have discharged its full duty, unless you took it up with Mr. Marshall, with regard to sending it somewhere else for trial?

Mr. WOOD. Exactly so, sir; if there had been a violation of the law.

Mr. CARLIN. Why did not Mr. Hershenstein consider it his duty to do that?

Mr. WOOD. I think he was present, sir, at the time. I think he came into my office and brought the matter up.

Mr. CARLIN. You think Mr. Hershenstein originated the idea that this office ought to initiate the proceeding in the State district attorney's office?

Mr. WOOD. I think so, sir.

Mr. CARLIN. Had the district attorney for the State or the county taken any proceedings up to that time?

Mr. WOOD. No, sir; I think not.

Mr. CARLIN. Then it was upon the initiative of this office that the district attorney for the county took that case up?

Mr. WOOD. No, sir; I think Mr. Anderson—I am not sure that is his name, or Burke—came into me and said, "They want to make a complaint to the district attorney," and I asked them two or three times, I says, "Do you want to make a complaint?" He said they did.

Mr. CARLIN. What was the use of asking two or three times, if they said it once?

Mr. WOOD. I wanted to be sure he wanted to make the complaint, and then I went in to see Mr. Marshall.

Mr. CARLIN. He wanted to make a complaint where?

Mr. WOOD. The district attorney's office of the county of New York.

Mr. CARLIN. Why did you not tell him to go there?

Mr. WOOD. I did, sir.

Mr. CARLIN. What was the necessity for bothering Mr. Marshall about it?

Mr. WOOD. I wanted to talk to Mr. Marshall first, because I wanted to be sure of my own grounds.

Mr. CARLIN. Yes; because you could not get the authority for sending it there without his consent?

Mr. WOOD. Yes; I think I could have sent it there myself.

Mr. CARLIN. Why did you not do it?

Mr. WOOD. Because I wanted to be sure. My name had been involved in this case, and I wanted to consult Mr. Marshall about it.

Mr. CARLIN. Now, coming back to my question, after talking with Mr. Marshall the case was called to the attention of the prosecutor for the county?

Mr. WOOD. Yes, sir; I think Mr. Anderson went there and called.

Mr. CARLIN. I am asking about your connection with the matter now.

Mr. WOOD. Yes, sir.

Mr. CARLIN. What did you do to bring it to the attention of the district attorney's office?

Mr. WOOD. I called up the district attorney and was put on with District Attorney Swann—on the wire—and told him there was a gentleman coming to his office who had a complaint to make, would he please assign it to some assistant who would look after it. He said he would be very glad to.

Mr. CARLIN. That was accordingly done.

Mr. WOOD. That was done, sir.

Mr. CARLIN. Have you followed the case up?

Mr. WOOD. I have not, sir.

Mr. CARLIN. You do not know what has happened there?

Mr. WOOD. I do not.

Mr. CARLIN. Why did you not let Mr. Hershenstein, who had charge of the case, do that?

Mr. WOOD. Well, because it was—I was at the head of the criminal bureau and I had talked to Mr. Marshall, and he had told me to do it, therefore I did it.

Mr. CARLIN. You mean you asked Mr. Marshall's consent to it?

Mr. WOOD. I asked Mr. Marshall whether that was the proper course to pursue.

Mr. CARLIN. In other words, after entering into an agreement to refer this matter to a referee to decide whether there had been any violation of the Federal law, and having been beaten before the referee, you still thought you would not have discharged your full duty unless you pursued this fellow before the State officials?

Mr. WOOD. No, sir; but I thought this, if the representations were true that these men had been defrauding, that there ought to be a remedy somewhere; that was exactly my position.

Mr. CARLIN. But your forum is the Federal forum?

Mr. WOOD. Exactly so.

Mr. CARLIN. And after the referee had decided against you here, you still had the conviction that your full duty had not been discharged?

Mr. WOOD. Yes, sir; if there had been a wrong I thought there ought to be a place to right it.

Mr. CARLIN. Well, there are a great many wrongs against the Commonwealth of New York and city of New York that you do not bother with at all?

Mr. WOOD. Oh, yes; the great majority of them we have nothing whatever to do with.

Mr. CARLIN. No responsibility on you to see that the State laws are enforced?

Mr. WOOD. No, sir.

Mr. CARLIN. You consider you acted in perfectly good faith, after being beaten before the referee here, to send it there?

Mr. WOOD. Absolutely. My conscience is absolutely clear on it. I haven't the slightest feeling in the world against these men and no personal interest in it whatever.

Mr. CARLIN. Well, I thought you said—I thought I understood you to say that your great care and caution in the matter was because of your personal interest in it.

Mr. WOOD. I did not say that, sir. I said I wanted this thing to be handled very carefully, because I had been involved in the case in a civil suit.

Mr. CARLIN. Because you had a personal interest in the matter?

Mr. WOOD. No; because at the time—some months before that—I had then nothing more to do with it. The whole matter, as far as I was concerned, was dead.

Mr. CARLIN. Well, now, let us see about that, Mr. Wood. If it was dead, did you think that the district attorney's office was a morgue for dead things?

Mr. WOOD. No; but my end of it.

Mr. CARLIN. I mean the county district attorney's office?

Mr. WOOD. No; my end was an entirely different end.

Mr. CARLIN. When you understood you had a corpse and the thing was dead, did you think you were burying it to send it up to the district attorney's office of the county of New York?

Mr. WOOD. Mine was not a dead issue. Judge Unger reported to me he saw nothing to do in the action.

Mr. CARLIN. I understood you to say you thought the matter was dead?

Mr. WOOD. So far as my end of it was concerned.

Mr. CARLIN. Well, as far as you were concerned, the matter was dead. I ask you, did you think that the district attorney's office for the county was a burial place of the dead for this office?

Mr. WOOD. Not at all, sir; because the angle of the matter in which I appeared did not have anything to do with the district attorney's office.

Mr. CARLIN. When you turned this case over to the district attorney, by telephone, then you sent Mr. Anderson around there, I understand?

Mr. WOOD. Yes, sir.

Mr. CARLIN. Can you tell me just why Mr. Anderson came to consult you with reference to a violation of the State laws?

Mr. WOOD. I can not, sir. He was brought into my office, but why he was brought in there I do not recall at all, but I know he was in my office.

Mr. CARLIN. You advised him that you thought he probably had a remedy under the State law?

Mr. WOOD. No, sir; I do not think I gave him any advice at all about that. I am quite sure I didn't.

Mr. CARLIN. Did you advise Mr. Marshall that you thought he had a remedy under the State law?

Mr. WOOD. No, sir; I did not know enough about the facts to know. I asked Mr. Marshall if they were agreed there might be a criminal violation of the State law.

Mr. CARLIN. Do you usually do that in cases where the grand jury has failed to indict, under the Federal law?

Mr. WOOD. We do not often have those cases, sir. It is not very frequent where we have a case where there is no violation of the Federal law, and there may be a violation of the State law.

Mr. CARLIN. Now, did you turn over any papers that this office had, to the district attorney's office?

Mr. WOOD. I think all of the papers were turned over.

Mr. CARLIN. Did you turn them over?

Mr. WOOD. No, sir; I did not.

Mr. CARLIN. Did you order them turned over?

Mr. WOOD. I did not. Mr. Marshall spoke to Mr. Wise over the telephone and told him the district attorney wanted those papers, and Mr. Wise says "Turn them over."

Mr. CARLIN. They were turned over by Mr. Marshall himself?

Mr. WOOD. They were turned over by the direction, I think, of Mr. Marshall—physically turned over by Mr. Hershenstein.

Mr. CARLIN. Were the minutes before the grand jury in that case taken stenographically?

Mr. WOOD. Well, sir, I was not in the court—not in the grand-jury room. I assume they were. They usually are. I assume they were.

Mr. CARLIN. Were those minutes a part of the papers in the case?

Mr. WOOD. Well, if they were, they were not turned over to the district attorney.

Mr. CARLIN. How do you know?

Mr. WOOD. Because I was asked about it, and said they were not to be turned over.

Mr. CARLIN. Who asked you about it?

Mr. WOOD. Mr. Hershenstein.

Mr. GARD. Mr. Wood, I am interested somewhat in this matter, especially in relation to the matter you have been talking about. I understand that you at first represented or attempted to represent an interest adverse to this Keen & Bard Co., or Bard & Keen Co.?

Mr. WOOD. Yes, sir; a creditor.

Mr. GARD. You say that you got no compensation for that?

Mr. WOOD. No, sir.

Mr. GARD. How did you introduce yourself when you got there?

Mr. WOOD. I said, "I am Mr. Wood, an attorney, representing the Pike's Peak Film Co."

Mr. GARD. Did you have any card with you?

Mr. WOOD. I did not.

Mr. GARD. Do you have any cards that you carry around with you, with your title on them?

Mr. WOOD. I do not. I have had, but the Attorney General sent around a circular that cards ought not to be used. Since that time I have not used any. When I first came to the office I had a card engraved.

Mr. GARD. Do you recall now whether you used a card, with your designation as assistant district attorney on, when you went to Bard & Keen's place?

Mr. WOOD. I did not, sir. I gave them no card.

Mr. GARD. Do you recall making the statement when you left Mr. Keen that you would get him?

Mr. WOOD. I did not make any such statement.

Mr. GARD. Positive about that?

Mr. WOOD. Absolutely positive.

Mr. GARD. This one call was the extent of your connection with this matter?

Mr. WOOD. That was absolutely the extent of it.

Mr. GARD. Within about three or four months after that it came up in the office of the United States district attorney as a criminal prosecution.

Mr. WOOD. Through some other complaints from San Francisco, I believe.

Mr. GARD. A complainant by the name of Anderson.

Mr. WOOD. Burke was the other gentleman—Anderson and Burke.

Mr. GARD. And in that matter, with the criminal side of it, you had no connection?

Mr. WOOD. I had very little connection with it. These gentlemen came in and saw Mr. Hershenstein personally. I did not know anything about it. I try in all cases to get a written complaint, if I can, but verbal complaints will come in, and you can not stop them; and these gentlemen came in with their attorneys and made a verbal complaint. Therefore I knew nothing of it for several days.

Mr. GARD. May I ask, if the assistant attorneys in the office of the district attorney are divided with relation to any class? Is there any definition of first, second, or third assistant, or anything like that?

Mr. WOOD. No; there is none.

Mr. GARD. They are all classed as assistant district attorneys?

Mr. WOOD. Yes, sir.

Mr. GARD. And certain work given to them; that is your plan, is it?

Mr. WOOD. Yes, sir.

Mr. GARD. We have also heard from another assistant district attorney that it is the plan of each man to whom a case is intrusted to rather follow it along from the grand jury to the petit jury; that I suspect is true, is it?

Mr. WOOD. Yes; in a great many cases.

Mr. GARD. Did you have charge of the prosecution of the—the trial prosecution of this man Kugel?

Mr. WOOD. I did.

Mr. GARD. And Feldman?

Mr. WOOD. Yes, sir.

Mr. GARD. Was it under your direction that a man went to Mr. Kugel's office, as late as 5 o'clock in the night, with an alleged officer of the United States and sought entrance into his closed office, for the purpose of inspecting his private papers and records?

Mr. WOOD. Certainly was not. I never sent anyone to Mr. Kugel's office to inspect any of his private papers.

Mr. GARD. If that was done in a case which you were trying, where you were an active prosecuting officer, would you have any knowledge of that?

Mr. WOOD. I had no knowledge of it.

Mr. GARD. I am very frank to say to you that the testimony this committee has, apparently by an unbiased witness, that is the janitor of the building, is that Mr. Hershenstein and some one else came to him and sought entrance to Mr. Kugel's office when it was closed and locked, desiring to examine his private papers and his personal records.

Mr. WOOD. With all due respect to the witness, sir, I do not think it can possibly be true. I am quite sure that Mr. Hershenstein would not do any such thing, and I know I knew nothing of any such matter.

Mr. GARD. Did you have information come to you of letters sent by Mr. Marshall, the district attorney?

Mr. WOOD. Yes, sir; I saw those letters.

Mr. GARD. You saw those letters, did you?

Mr. WOOD. Yes, sir.

Mr. GARD. Did you have charge of the grand jury which called Mr. Feldman, and which indicted him almost on the following day?

Mr. WOOD. I did not. I don't think I appeared there when Feldman was a witness at all.

Mr. GARD. You did not have charge of the grand-jury proceedings in that case?

Mr. WOOD. I think I appeared one day; I am not sure about that.

Mr. GARD. But you did have charge of the trial?

Mr. WOOD. I did; yes, sir.

Mr. GARD. Mr. Feldman, I believe, was acquitted after the jury was out as long as five minutes, or something like that?

Mr. WOOD. That is not true, sir. The jury was out in that case, as I recollect it, some 8 or 10 hours.

Mr. GARD. Oh, that long?

Mr. WOOD. Yes, sir.

Mr. GARD. Do you remember that you had or that you have a practice yourself, representing the Government, of holding in your hand like this [indicating] what purports to be a statement of evidence, said to have been given to a grand jury, and you say to a witness, "Didn't you say such and such before the grand jury?" Is that part of your practice in cross-examination?

Mr. WOOD. I never did that but once, sir, and Judge Learned Hand refused to allow the question. That was the only time it was done. Objection was made to it, and Judge Hand consulted with Justice Hough and some of the other district judges after recess, I think, and held that he did not think that ought to be asked, because he did not think that anything that happened in the grand-jury room ought to be brought out in the court room.

Mr. GARD. On recollection, do you remember you asked it on the second trial, when Mr. Kugel was tried the second time? Do you remember you still adopted the same plan?

Mr. WOOD. Well, I can not remember everything that occurred in the trial, sir. It may be that I asked some such question. I won't say I didn't.

Mr. GARD. In your manner of cross-examining, and, of course, we are investigating this not so much on your account, but we are charged with the duty of investigating the conduct of the office of the district attorney here in the southern district of New York; therefore, while these matters may be personal, it is only that the committee desires information.

Mr. WOOD. That is all right, sir. I am perfectly willing to answer any proper questions.

Mr. GARD. And when you held this paper in your hand and asked this particular witness, in the one case that you admit you did, you afforded the witness no opportunity to see the paper, but you read to him the entire evidence appearing there or some part of it?

Mr. WOOD. Well, now, I can not tell you exactly how that came up, but the minutes of that trial are available. They are all downstairs and you can see exactly what occurred. Those minutes were all written out.

Mr. GARD. You say they are available and we can see them?

Mr. WOOD. Yes, sir; the trial minutes of the trial court. Yes; I do not see any reason why you should not see those minutes.

Mr. GARD. You say that the one time you did that, Judge Hand said that he thought that was an improper way of proceeding, or an improper question?

Mr. WOOD. No objection was made to it, and he said he would consult the other judges, and he did consult the other judges, and came back after recess and made a ruling that he did not think any question ought to be asked which involved any testimony that might have been given before the grand jury.

Mr. GARD. Was that a question you asked of Mr. Feldman?

Mr. WOOD. I can not remember that; it has been so long ago since I tried that case and I could not possibly remember that.

Mr. GARD. How long ago was it that case was tried?

Mr. WOOD. Oh, it must be two years anyhow.

Mr. GARD. How long after the first trial was the second trial of Mr. Kugel?

Mr. WOOD. I think, perhaps, eight or nine months; I won't be sure about that, but the records are all here.

Mr. GARD. Is it true that you were openly rebuked by the United States judge for presenting evidence of Rogal and Brass against this defendant?

Mr. WOOD. Openly rebuked? Never in my life, sir, have I been openly rebuked by any judge.

Mr. GARD. Were there any comments by the trial judge in the last trial relative to the credibility of the witnesses, Rogal and Brass—I assume those are the names, I may be incorrect—these persons who were the bankrupts and who appeared as witnesses and were not prosecuted?

Mr. WOOD. They were prosecuted.

Mr. GARD. What was their prosecution? I understand they entered pleas of guilty to conspiracy and concealing assets.

Mr. WOOD. And I think one of them for perjury.

Mr. GARD. And do you recall their sentences?

Mr. WOOD. They were sentenced to 30 days' each.

Mr. GARD. Where?

Mr. WOOD. In the Tombs prison or the New York County penitentiary: I do not recollect which.

Mr. GARD. Were they sentenced there, or to serve in the custody of the marshal?

Mr. WOOD. Well, all of our sentences read—I believe all our commitments read—to the custody of the marshal, but he invariably puts them in the Tombs or New York County Penitentiary.

Mr. GARD. Do you have personal knowledge whether these persons were so confined in the Tombs or county penitentiary?

Mr. WOOD. I know that Rogal was in the Tombs. I am quite sure Brass was, but I don't know that.

Mr. GARD. Referring to my question immediately preceding, is it true that there was comment of a United States judge on the credibility of this testimony given to the jury?

Mr. WOOD. I assume that when the court charged the jury it said that those men, having taken a plea of guilty to these various crimes,

their testimony would have to be corroborated, or it should be accepted with caution. I assume that was done. It is always done in a case.

Mr. GARD. Required to be done in such a case?

Mr. WOOD. I think so; and that is the only comment that I recollect.

Mr. GARD. In the Kugel-Feldman cases, do you remember calling to the grand jury the professional partner and personal friend of Mr. Kugel, whose name was Saxe?

Mr. WOOD. I remember that he was called.

Mr. GARD. Do you remember the letter of Mr. Moss, protesting against such action?

Mr. WOOD. I do, sir.

Mr. GARD. Do you also remember the letter of Mr. Moss, which protested against interview by agents of the Government of the defendant Feldman, in New Haven, without notice to his attorney?

Mr. WOOD. Well, I remember that there were a couple of letters written, but just what the substance of them were, I don't know.

Mr. GARD. Were these letters transmitted to Mr. Marshall, the district attorney?

Mr. WOOD. They were.

Mr. GARD. They came to his personal knowledge?

Mr. WOOD. They did.

Mr. GARD. Did he take any action on them?

Mr. WOOD. I think not.

Mr. GARD. So far as you know, he made no reply to these letters affirming or disaffirming the matters complained of?

Mr. WOOD. So far as I know, he did not. I would like to tell you why Mr. Saxe was called, if you will permit me.

Mr. GARD. Very glad to permit you to say anything you can.

Mr. WOOD. We were informed by Rogal & Brass that a check for \$750, or some such amount, had been given to Kugel & Saxe one or two days before the petition in bankruptcy was filed. We could not find that check. We had the stub, but we could not find the check. Mr. Kugel made a statement in my office for three days, at his own request, and I asked him about that check, and he said he knew nothing about it. We could not find that check anywhere. It was not among the bankruptcy effects that were turned over to the receiver or trustee. A long time afterwards the Corn Exchange Bank found that check among some old papers that they had and sent it to us. We immediately sent a photographic copy of that check to Mr. Smith, attorney of record for Kugel, and asked him if he could make any explanation of it. It was indorsed with Kugel's and Saxe's names. It was quite important for the Government to know who had indorsed that check. We did not know who all were involved in this alleged crime, and we wanted to find out, as it was very important that we should find out who indorsed that check, and for that reason we thought Mr. Saxe would be the proper man to tell whose handwriting was on the back of that check, and he was sent for for the purpose of finding that out.

Mr. GARD. That is the reason that you subpoenaed him?

Mr. WOOD. Yes, sir.

Mr. GARD. Was that the reason why you examined him for more than two hours?

Mr. WOOD. There must be a mistake, sir, because the grand jury is only in session for two hours, and they never get started immediately; other things interrupt.

Mr. GARD. Did your examination embrace also examination outside of the grand jury room and in your office? I understand that your office—when I use the phrase “your office” I mean the district attorney’s office—does have a policy of calling persons in and examining them on some sort of a semi or alleged judicial process called a ticket?

Mr. WOOD. We have a printed form of request, which we inherited from the former administration, which some of the assistants send out personally. I have never sent one, but some of the assistants do send those out.

Mr. GARD. Is this what you call a request [indicating]?

Mr. WOOD. Yes, sir.

Mr. GARD. I suspect this is unaccompanied by any power of enforcement?

Mr. WOOD. Absolutely, sir, simply a request, and says so on its face.

Mr. GARD. They are served by officers of the United States marshal’s office?

Mr. WOOD. No, sir; I think those are sent by mail.

Mr. GARD. Are they ever given to the process servers of the district attorney’s office or the marshal’s office to serve?

Mr. WOOD. I do not think so. We have no process servers.

Mr. NELSON. Let that go right in there.

Mr. GARD. Have you any objection to our incorporating that in the record?

Mr. WOOD. Not the slightest, sir.

Mr. GARD. Very well; it may be considered as part of the record. We do not desire to offer anything unless it has the approval of your office.

The ticket is as follows:

OFFICE OF THE UNITED STATES ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK.

To _____
Of No. _____ Street,

You are hereby requested to appear before the United States attorney for the southern district of New York, at the United States courthouse and post-office building, at the corner of Broadway and Park Row, in the Borough of Manhattan, city of New York, on the _____ day of _____ 191—, at the hour of _____ m., as a witness in regard to an alleged violation of _____.

Dated _____, 191—.

United States Attorney for the Southern District of New York.

(On the side:) Inquire on the third floor, room _____, for assistant U. S. attorney.

Mr. WOOD. In answer to your other question, I have no recollection of ever having examined Mr. Saxe in my office.

Mr. GARD. I may have forgotten. Did you tell me how long after the first trial, which resulted in the mistrial of Kugel, the acquittal of Feldman, that the second trial was had?

Mr. WOOD. I think I told you eight or nine months, but I would not like to be positive about that.

The record is about somewhere; I can get you the exact dates, if you care for them.

Mr. GARD. Can you give us any information concerning—there is evidence here that a man by the name of Oppenheimer was indicted seven times on the same set of facts. Do you know anything about that?

Mr. WOOD. My information about that is, that is incorrect. I think there have been four indictments voted against Oppenheimer, and I would like to give you the history of them.

Mr. GARD. Be very glad to have them, indeed.

Mr. WOOD. The first two indictments there was a demurrer on a motion to quash, filed, I think, by his attorneys.

Mr. CARLIN. Just right there, did you appear in these matters of Oppenheimer?

Mr. WOOD. I appeared on this argument before Judge Thomas. There was no special plea in bar. There was a demurrer and a motion to quash. The matter was argued before Judge Thomas, of Connecticut.

Mr. CARLIN. What was the ground of the motion to quash?

Mr. WOOD. Well, I think that embraced the ground that the time was barred by the statute of limitations. It may have been that was in the demurrer.

Mr. CARLIN. You would do that on plea in abatement?

Mr. WOOD. It ought to be done on the special plea in bar. The Supreme Court has held it can not be raised any other way.

Mr. CARLIN. So the motion to quash was not on the ground that you had changed the indictment after it had left the grand jury room?

Mr. WOOD. Oh, no; the motions to quash are recorded and the demurrer is recorded. You can see exactly what they were.

Mr. CARLIN. It has been represented to us, and this is what the judge is getting at, while you are right there on that point to give us the facts about it, that this indictment had been changed after it left the grand-jury room.

Mr. WOOD. It did not occur in that particular motion. They were the first two indictments found. These motions were made and demurrer filed, and the matter was argued before Judge Thomas. I think it was in the spring. He filed his decision, I think, in September, in which he granted the motion to quash—sustained the motion to quash and dismissed the indictment, on the ground that the one-year statute of limitations mentioned in the bankruptcy act applied to conspiracy to violate the bankruptcy act and not the general three-year statute of limitations. Some difficulty arose as to the entry of the order on that decision. Finally, when Judge Thomas came down, Mr. Marshall took the matter up with him. I did not have any part in this, but I believe he held that the 30 days had expired in which the Government had the right to appeal, under the criminal appeals act, and he could not enter the order. Therefore, we could not take an appeal. There was a case pending in the office in which the same question was involved. A plea in bar was filed in that case and the matter came on before Judge Hough, and he decided, following Judge Thomas, that the one-year statute applied. We thereupon appealed from that case, and the Supreme Court of the United States held that that was erroneous.

Mr. GARD. What was erroneous?

Mr. WOOD. The holding of Judge Thomas, that the one year's statute of limitations applied, was erroneous; that the indictment for conspiracy to violate the bankruptcy act was governed by the three-year period, and not the one year in the act. That disposed of two indictments. The next indictment—

Mr. CARLIN. Hold on. You had found the two indictments before the Supreme Court of the United States had passed on the question of the statute of limitations?

Mr. WOOD. Yes, sir; that was done for protection.

Mr. CARLIN. Were not all these four indictments found within a period of one year?

Mr. WOOD. I can not answer you that, sir.

Mr. CARLIN. I want to be frank with you, sir. It takes the Supreme Court at least a year and a half or two years to get to these appeals.

Mr. WOOD. No; the Government has a right to preference on appeals.

Mr. CARLIN. I know, but how long did it take in this case?

Mr. WOOD. Well, I think, sir, that the decision, the appeal, was started in October, and in the meanwhile we had a decision from the circuit court of appeals here, holding that the three-year statute applied. Early the following spring—I can get you the dates of those decisions; it is a perfectly simple matter, but it was not very long.

Mr. CARLIN. Then it went from there to the Supreme Court of the United States?

Mr. WOOD. No, sir; we got a decision in another case that was pending upstairs, and on appeal the same question was involved and I urged the circuit court of appeals to determine that question, and they did, and then within a month, I think, the Supreme Court handed down a decision, holding the three-year statute applied. Then the third indictment—

Mr. CARLIN. The thing I am after is, did it appear either on demurrer or motion to quash, or any other way, that the indictment had been changed after it left the grand-jury room?

Mr. WOOD. As to those two indictments, there was no such allegation.

Mr. GARD. We are talking about all of the indictments. We were not concerned with what you call the numerical order of them. We are frank to tell you that we have evidence—evidence has been given here, both orally and written—showing that after an indictment had been returned, signed by the foreman, and a copy thereof obtained by the defendant, that the indictment was changed, so that after the word "moneys" was written the words "or choses in action." The words "or choses in action," of course, enlarges the charge against the man.

Mr. WOOD. I think I can explain that, from information. I have no knowledge of the facts, but I think from information I can explain it. The grand jury handed down an indictment, and for some reason Mr. Hershenstein, who had charge of it, did not sign Mr. Marshall's name at the foot of the indictment. We examined the authorities on that proposition, and while we thought it was not

fatally defective, we thought we had better have another indictment, and the clerk called Mr. Hershenstein's attention to it, and thereupon the court told Mr. Hershenstein to return, that that indictment would not be considered filed, but it would be returned and the grand jury could take other action. I will not give dates, but that was within two or three days afterwards. The grand jury, on that same indictment, found again and returned another indictment four or five days later, and in the new indictment which had been voted by the grand jury it was substantially the same as the old one, except the words "choses in action" were written in. In the meanwhile, as I understand it, the counsel for Oppenheimer requested a copy of the indictment, which was supposed to have been returned three or four days before, and had gotten a copy of that, and that copy was not like the copy which was finally returned into court.

Mr. CARLIN. Now, the indictment with the words "choses in action" was quashed, or motion to quash was made?

Mr. WOOD. I think not, sir.

Mr. CARLIN. Was it not quashed, for the very reason that those words occurred in the indictment and they had not occurred when the grand jury found the indictment?

Mr. WOOD. I think not, sir.

Mr. CARLIN. Did you try that case?

Mr. WOOD. No.

Mr. CARLIN. Then you do not know?

Mr. WOOD. No; but my information is it is not so.

Mr. GARD. It was Mr. Hershenstein's case, was it?

Mr. WOOD. Yes, sir.

Mr. GARD. Another matter called to our attention—and of course this is again probably not within your jurisdiction, but it is affecting the conduct of the office—it is charged in the evidence that we had before us in the same connection, that after one of these indictments had been returned and the court had acted on it, finding it to be defective, I believe on a motion to quash, that Mr. Hershenstein detained the grand jury, took them downstairs and kept them just a moment, not long enough to consider the merits of the matter, returned with another indictment, which indictment was itself dismissed because of representations and testimony that there had been no consideration of it, and no vote by the grand jury on the indictment. Are you acquainted with that circumstance?

Mr. WOOD. I am not, sir. I know nothing about it.

Mr. GARD. It was said that it was quashed for the reason that it was made to appear to the court that the time was so short that there necessarily could have been no vote; that the jury filed in and filed out almost within the same moment; that probably all that was done, or was represented to have been done, was that the foreman signed the bill, and it was again returned and quashed, for the reason, as I have said, that there could have been no consideration of it, and there could have been no action by the grand jury in determining whether there should be an indictment?

Mr. WOOD. I think somebody has the facts mixed, sir. There have only been, so far as I know, two motions to quash granted; the last one was granted in February, I think, February 2, and that was on the ground that the decision of Judge Thomas holding the one-

year statute of limitations applied, was the settled law of the case and, therefore, no new indictment could be found. From that we have appealed.

Mr. GARD. Tell us what the present status of this Oppenheimer case is. There seems to have been so much confusion; there are either seven indictments or four indictments, and personally I would like to know the status of the last indictment.

Mr. WOOD. The first two indictments were quashed.

Mr. GARD. I understand.

Mr. WOOD. I think the third was nol-prossed.

Mr. GARD. Why?

Mr. WOOD. That I am not prepared to say; I was not in on that. I do not recall what happened to it.

Mr. NELSON. Who could tell us?

Mr. WOOD. Mr. Hershenstein would be able to tell you about it fully; he had charge of that.

Mr. GARD. If there is an order nolling an indictment, that has to have the sanction of the district attorney or his assistant attorney, has it not?

Mr. WOOD. Yes; that was done by the district attorney. The fourth indictment was quashed, and that is now on appeal to the Supreme Court of the United States.

Mr. GARD. After a nolle, why should there be an additional indictment?

Mr. WOOD. When an indictment is filed there may be some defect in it, and the only way you can get rid of it is to nolle it. Some disposition must be made of it. Or the record will show it is outstanding.

Mr. GARD. These matters that you have been trying to speak of—the Oppenheimer matters—were not, I suspect, under your immediate jurisdiction; they were under the control of Mr. Hershenstein?

Mr. WOOD. He had charge of all the detail matters of that. I remember I appeared before Judge Thomas and argued that first motion to quash and the demurrer. I did not appear on the second argument.

Mr. GARD. Is Hershenstein what might be called the assistant in charge of bankruptcy cases?

Mr. WOOD. No, sir; he has other cases. We have no special assistant for bankruptcy cases or any other cases.

Mr. GARD. No special delegation of authority?

Mr. WOOD. No, sir.

Mr. GARD. Along any lines, either of investigation or of trial?

Mr. WOOD. No, sir.

Mr. CARLIN. I forgot to call your attention to the fact, with reference to the Keen matter, so that you might answer a question I desire to ask you; I understood you to say that you and the United States district attorney, Mr. Marshall, turned the matter over to the State's district attorney, because after conference you agreed that there had been a violation of the State law?

Mr. WOOD. We thought there might be a violation of the State law. We were not positive on that, but we thought it was a matter that might properly be investigated by the county district attorney.

Mr. CARLIN. Did you not get hold of Mr. Keen's books and papers by this warrant which was issued by your office?

Mr. WOOD. I did not.

Mr. CARLIN. Did not your office get them?

Mr. WOOD. They came to the office, I think, sir, but I understood—I will not be positive—but I understood that Mr. Keen turned the office over to Mr. Anderson and Mr. Bard.

Mr. CARLIN. Do you know that the district attorney has decided there was no violation of the State law?

Mr. WOOD. I do not, sir.

Mr. CARLIN. If you did know he had reached that decision, and also having before you the knowledge that your referee had reached the decision that there was no violation of the Federal law, and having before you the knowledge that one man was locked up over night and both required to give large bonds and put to inconvenience and expense, do you not think that is right smart of a hardship on a man whom everybody testifies has been guilty of no crime?

Mr. WOOD. I do; but hardships frequently will occur; you can not do everything just exactly as you might wish to do it; it can not be done.

Mr. CARLIN. Do you have the fixing of the cases for trial in your criminal department—assigning or determining in any way how they shall be fixed for trial?

Mr. WOOD. I do not exactly understand what you mean.

Mr. CARLIN. After an indictment has been found—say, an indictment has been found 5 months or 6 months or 12 months ago; who has the determination of when the court will be asked to try that case?

Mr. WOOD. It depends; just as soon as it can be made ready and reached on the calendar it is tried, but some cases require a great deal of preparation.

Mr. CARLIN. Why has not the Rae Tanzer case been tried?

Mr. WOOD. Because we have been extremely busy. One reason was that Mr. Osborne has been engaged in the New Haven prosecution, which lasted from October to way late in the winter, and he was the most important witness in the case and, of course, we could not go on without him. Since then we have had several other cases; we tried one case, and had a mistrial after several weeks.

Mr. CARLIN. You mean the Slade case?

Mr. WOOD. Yes; Judge Russell was taken ill.

Mr. CARLIN. Why has not that Slade case been tried?

Mr. WOOD. Because we are not able to get around to it.

Mr. CARLIN. You have tried cases where the indictments were found subsequent to that, have you not?

Mr. WOOD. Yes; and they were simple cases. Other cases involve a great deal of labor and preparation. For instance, there is one witness in the Slade case we do not know where he is now.

Mr. CARLIN. Is he a witness who testified in the former case, you mean?

Mr. WOOD. Yes.

Mr. CARLIN. You had a right to put him under bond for his appearance, and to keep him.

Mr. WOOD. Well, that makes a hardship, too, if he is not able to give bond. He is a poor man, and he had to make a living; he had a wife. There are so many things you have to take into consideration

in preparing for a trial, that you can not say that a case should be tried at any particular time.

Mr. CARLIN. How long has it been since Rae Tanzer's indictment was found?

Mr. WOOD. I think she was arrested about March, 1915, and indicted, perhaps, two or three weeks later. That is my best recollection. It has not been a year.

Mr. CARLIN. It has been almost a year? That is all.

Mr. NELSON. There are a number of questions which have been handed in, and I have been looking them over, and they have been partially covered, so I think that Mr. Walsh, representing Mr. Buchanan, might as well ask whatever of those remaining questions he may care to ask. I want to say, by way of explanation to you, that where a member of Congress makes an impeachment on the floor of the House, he is supposed to have information, and the committee permits him, or some one representing him, to furnish information to the committee, and that is the reason why Mr. Walsh is given the permission to ask questions occasionally.

Mr. WALSH. Mr. Wood, can you tell the committee whether or not either Mr. Rogal or Mr. Brass was subsequently pardoned?

Mr. WOOD. Mr. Rogal was pardoned.

Mr. WALSH. Who asked for that pardon?

Mr. WOOD. The United States attorney.

Mr. WALSH. You say you do not know whether they were permitted to go at large without bond, after their conviction?

Mr. WOOD. My recollection is that they were on bail.

Mr. WALSH. After conviction?

Mr. WOOD. After conviction; yes, sir.

Mr. CARLIN. I thought you said one of them went to jail?

Mr. WOOD. Both of them went to jail, sir.

Mr. WALSH. Do you want the committee to understand that either or both of them served the 30 days they were sentenced to serve?

Mr. WOOD. If they did not serve the 30 days, it is the fault of the United States marshal's office, because Judge Learned Hand imposed the sentence, and they were turned over to the custody of the marshal.

Mr. WALSH. Do you know anything about it yourself, whether they actually did serve the sentence?

Mr. WOOD. I do not; except that I had some messages from Rogal when he was in the Tombs; that is all.

Mr. WALSH. Were you instructed at any time by Mr. Marshall with respect to breaking up any so-called "bankruptcy ring" here in the city?

Mr. WOOD. I never was.

Mr. WALSH. Was Mr. Hershenstein, to your knowledge?

Mr. WOOD. Not to my knowledge.

Mr. WALSH. Did you ever know that Mr. Marshall had publicly made statements that he was going to break up the bankruptcy ring that existed here in the city?

Mr. WOOD. Not to my knowledge. He never made the statement in my presence.

Mr. WALSH. Will you tell the committee now that you have no knowledge whatever of any attempt on the part of the district

attorney's office to break up a so-called bankruptcy ring here in the city?

Mr. WOOD. I have no knowledge of any purpose on the part of the district attorney's office to do anything else in bankruptcy matters save to punish violators of the law.

Mr. WALSH. Have you ever been called to account, Mr. Wood, for any of your acts while assistant district attorney by Mr. Marshall?

Mr. WOOD. I have never been called to account by Mr. Marshall for any of my acts. I have been called upon for explanations, and I have given them.

Mr. WALSH. Have you ever been reprimanded by him for any of your acts or any conduct by you as assistant district attorney?

Mr. WOOD. I never have.

Mr. WALSH. So that would it be a fact to say, so far as you know, Mr. Marshall has approved of all of your acts while assistant district attorney; that is, all of your acts of which he had knowledge?

Mr. WOOD. I do not know. You will have to ask Mr. Marshall whether he approved of them. He did not express any disapproval to me.

Mr. WALSH. Did you issue the subpoena to bring Mr. Feldman down here from New Haven?

Mr. WOOD. I do not have anything to do with issuing subpoenas.

Mr. WALSH. Did you cause it to be issued?

Mr. WOOD. I did not.

Mr. WALSH. Did you know anything about his being brought down here from New Haven?

Mr. WOOD. I—

Mr. WALSH. Did you know that he was here for a week?

Mr. WOOD. I do not know that; no.

Mr. WALSH. Did you know of any necessity that required his presence for a whole week?

Mr. WOOD. Well, I do not know. I can not answer the question.

Mr. WALSH. Feldman was a witness in the Kugel matter, was he not?

Mr. WOOD. He was a defendant.

Mr. WALSH. He was a defendant?

Mr. WOOD. Yes.

Mr. WALSH. But at first he was a witness—one from whom you were trying to get information?

Mr. WOOD. I do not know. I never examined Mr. Feldman. I do not know.

Mr. WALSH. Did you cause the young lady clerks in Mr. Kugel's office to be subpoenaed?

Mr. WOOD. Well, I know some of them were subpoenaed, but I do not think I caused it.

Mr. WALSH. You do not remember that?

Mr. WOOD. No; I do not think I did it. I remember that they were subpoenaed, but I do not think I did it.

Mr. WALSH. Were you and Mr. Hershenstein working together in the Kugel case?

Mr. WOOD. Mr. Hershenstein had charge very largely of the preparation of the evidence and getting the case ready for trial. The main part I had to do with it was the examination of Mr. Kugel, at his

own request, in the presence of his counsel. I was engaged for three days in taking his testimony.

Mr. WALSH. You appeared upon the first trial as counsel for the Government in the Kugel case, did you not?

Mr. WOOD. I appeared on both trials as one of the counsel for the Government.

Mr. WALSH. Is it so, Mr. Wood, that Mr. Slade invited you to go before Judge Hand, and it was ordered by Judge Hand that you should not ask Mr. Oppenheimer if he had been indicted, if he appeared as a witness?

Mr. WOOD. I know of no order of that kind.

Mr. WALSH. Do you recollect any understanding or any agreement or any request made by counsel for Kugel that you should not ask Oppenheimer when he testified whether or not he had been indicted?

Mr. WOOD. No; I recollect that, I think it was, Mr. Oppenheimer, went to see Judge Hand, and Judge Hand asked me if I intended to ask him that question, and I told him that then I had no present intention of asking the question. That is my recollection.

Mr. WALSH. That was before the trial, was it not?

Mr. WOOD. I do not know whether it was before the trial, or during the trial, but it occurred at some time.

Mr. WALSH. There was no question in your mind then, or is there now, that the asking of such a question was highly improper?

Mr. WOOD. No; I did not consider it was highly improper.

Mr. WALSH. You did not then consider it highly improper to ask him that question?

Mr. WOOD. No.

Mr. WALSH. On cross examination?

Mr. WOOD. No.

Mr. WALSH. Do you recollect that you participated in the second trial, and that you did ask him that very question on the second trial?

Mr. WOOD. I may have asked him; I do not recall now. It was a long trial; I may have asked him. As I said, the record is here, and it will speak for itself.

Mr. WALSH. You have no recollection of that event at all, you say?

Mr. WOOD. I have no present recollection.

Mr. WALSH. Did you have anything to do with this man named Goodman, who was called here to testify?

Mr. WOOD. I saw Goodman.

Mr. WALSH. Can you tell us how many times he was called to the district attorney's office?

Mr. WOOD. I have no idea.

Mr. WALSH. Did you cause the subpoenas to be issued for him?

Mr. WOOD. I did not.

Mr. WALSH. How many times did you talk with him about the Kugel case?

Mr. WOOD. My recollection is only once.

Mr. WALSH. Did you have anything to do with the bringing down of Mr. Kugel, sr., from New Haven?

Mr. WOOD. I had not.

Mr. WALSH. Did you see Mr. Kugel, sr., from New Haven?

Mr. WOOD. I never saw him in my life.

Mr. WALSH. Did Mr. Hershenstein have sole charge of the preparation of the Kugel case?

Mr. WOOD. I think he had; I do not think there was any other assistant assigned to that case.

Mr. WALSH. Did you participate with him in the preparation of the trial?

Mr. WOOD. To a limited extent. As I told you before, I took the statement of Mr. Kugel himself, which occupied a period of three days, I think.

Mr. WALSH. Did you send Mr. Goodman to Attorney Kugel's office to get a description of the office and to get a look at Mr. Kugel, so that he could identify him?

Mr. WOOD. I did not.

Mr. WALSH. Do you know whether Mr. Hershenstein did that or not?

Mr. WOOD. I do not know; I can not tell you what Mr. Hershenstein did.

Mr. WALSH. Were you charged by a juror upon either of the trials of the Kugel case with misquoting the testimony?

Mr. WOOD. I was not. I remember the incident you refer to.

Mr. WALSH. Just tell the committee what it was.

Mr. WOOD. I was summing up the case, and I had in my hands the stenographic transcript of the minutes.

Mr. NELSON. Of what minutes?

Mr. WOOD. Of the trial.

Mr. NELSON. Of the grand jury?

Mr. WOOD. No; the actual trial of the case; and I was quoting from the testimony of Herman H. Oppenheimer, as I recall it. I read exactly from the transcript, and the juror disagreed with the stenographer's notes and said that they were not correct.

Mr. CARLIN. Then what happened?

Mr. WOOD. Nothing; nothing could happen. I could not stand there and dispute with a juror as to whether the stenographic notes were correct or not. I simply read the notes as I had them, and went on with my argument.

Mr. GARD. In what case was that?

Mr. WOOD. Sir?

Mr. GARD. In what case was that?

Mr. WOOD. In the second trial of the Kugel case, I think.

Mr. WALSH. Is it a fact, Mr. Wood, that in the Rae Tanzer case she and all her witnesses and her counsel were indicted?

Mr. WOOD. It is a fact that Rae Tanzer and two sisters, I think, were indicted; Safford was indicted and convicted; McCullough and the Messrs. Slade—Maxwell Slade and David Slade—were indicted.

Mr. NELSON. Were indicted?

Mr. WOOD. Yes.

Mr. WALSH. Those indictments were separate, were they not?

Mr. WOOD. McCullough and the Messrs. Slade were indicted for conspiracy to obstruct justice; Safford was indicted for perjury; Rae Tanzer was indicted for perjury and for using the mails in a scheme to defraud, and the two sisters, I think, were indicted for perjury. That is my best recollection.

Mr. WALSH. Did not Mr. Marshall have personal supervision over all those cases?

Mr. WOOD. Mr. Marshall has personal supervision over every case. He is the United States attorney, and when any question arises Mr. Marshall is consulted. He was consulted in the Rae Tanzer cases frequently.

Mr. WALSH. By whom?

Mr. WOOD. By me and by Mr. Hershenstein, and by everybody else who had anything to do with them.

Mr. WALSH. Did not Mr. Marshall direct you to begin the obtaining of the indictments in the Rae Tanzer case?

Mr. WOOD. I can not tell you about that; I know I consulted Mr. Marshall at the time the warrant was sworn out, and I know that the warrant was sworn out with his approval. Whether he directed me after that or not I can not say. It may be that he did; it may be that I just went along then with the case in the ordinary way.

Mr. WALSH. This Rae Tanzer was a young girl, was she not? Will you give the committee her apparent age?

Mr. WOOD. I can not tell anything about Miss Tanzer's age or any other woman's age.

Mr. WALSH. You saw her. Can you not give the committee her apparent age?

Mr. WOOD. I think she testified to her age, but I can not recollect it.

Mr. WALSH. Do you mean to say that you can not give this committee the apparent age of Rae Tanzer?

Mr. WOOD. Well, I should say, if I am to be a judge of her age; I should say 25 or 26 years of age.

Mr. WALSH. When the warrant was issued she was taken into custody and locked up overnight, was she not?

Mr. WOOD. I do not recall, but I think that is probably true.

Mr. CARLIN. Mr. Wood, we will excuse you for the present.

Mr. WOOD. Thank you very much, gentlemen.

Mr. CARLIN. Is Charles Anderson here?

A VOICE. Yes, sir.

Mr. CARLIN. Mr. Clerk, swear Mr. Anderson.

TESTIMONY OF CHARLES ANDERSON.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. ANDERSON. My present address is 611 Mills Building, San Francisco, Cal. My city address is in care of the Elks Club.

Mr. GARD. Are you the same Charles Anderson who made complaint in the United States court against Keen and Bard?

Mr. ANDERSON. Against Mr. Bard and Keen.

Mr. GARD. Bard & Keen?

Mr. ANDERSON. Yes, sir.

Mr. GARD. How soon after your conference with Mr. Wood, the assistant district attorney, did you make the affidavit?

Mr. ANDERSON. I did not have any conference with Mr. Wood. I never have had.

Mr. GARD. Do you know anything about Mr. Wood's connection with that case?

Mr. ANDERSON. No, sir; he had no connection through me in this case. I did not know Mr. Wood.

Mr. GARD. With whom did you take up the matter in the district attorney's office?

Mr. ANDERSON. I took it up with my attorneys, the Goldsmith Bros., of No. 41 Park Row. They wrote a letter, stating the case, to Mr. Marshall.

Mr. GARD. The Goldsmith Bros. wrote to Mr. Marshall?

Mr. ANDERSON. Yes, sir; setting forth my case and my complaint. This letter was referred to Mr. Hershenstein. I was introduced to Mr. Hershenstein by Mr. Frederick E. Goldsmith. That was on or about January 6. I have a copy of the letter.

Mr. GARD. The 6th of January of this present year?

Mr. ANDERSON. Yes—1916.

Mr. GARD. Did you meet Mr. Wood at all in connection with the matter?

Mr. ANDERSON. Not for several days.

Mr. GARD. What did he say about the case when you did meet him?

Mr. ANDERSON. It was at the time that a warrant was to be issued—we were discussing the case. Mr. Wood addressed me and said, "That before any investigation or action would be taken we would have to present all the evidence and a clean-cut case, and, if it was taken up by the United States courts, it could not be withdrawn; we could not effect any outside settlement." He emphasized the point that the United States courts could not be used as a collecting agency.

Mr. GARD. It was taken up by the United States court, was it not?

Mr. ANDERSON. Yes, sir.

Mr. GARD. And it was transferred by the United States district attorney's office to the New York County district attorney's office, was it not?

Mr. ANDERSON. I claim that it was not transferred.

Mr. GARD. What?

Mr. ANDERSON. I claim that it was not transferred.

Mr. GARD. You claim that it was not transferred?

Mr. ANDERSON. I took it up with the criminal court, and I requested Mr. Dooling and Mr. Brogan to subpoena the papers and the books—the evidence.

Mr. GARD. And what?

Mr. ANDERSON. The papers and the books.

Mr. GARD. To do what?

Mr. ANDERSON. To subpoena.

Mr. GARD. Subpoena?

Mr. ANDERSON. Yes.

Mr. GARD. I understand it now—go ahead.

Mr. ANDERSON. These books were the evidence that I had in the case, or they were a part of the evidence against Bard and Keen.

Mr. GARD. We have evidence here that seems to be conclusive—from the district attorney's office—that they made a reference to a man by the name of Wemple, and it was thought, after that reference, that there was no violation of any law, and that then it was sent to this other court.

Mr. ANDERSON. When I was informed by Mr. Hershenstein that the referee had passed upon this, I asked him if all this evidence would be returned to Mr. Bard and Mr. Keen, who were the mana-

gers and assistant managers of the Associated Film Corporation, and he said "Yes." I said, "Then I am going to take it up immediately with the criminal court." I asked him particularly.

Mr. GARD. By the "criminal court" you meant the New York County court?

Mr. ANDERSON. Yes, sir.

Mr. GARD. Did you file a complaint there?

Mr. ANDERSON. I filed a statement; yes, sir.

Mr. GARD. Did you file any sworn complaint?

Mr. ANDERSON. No, sir.

Mr. GARD. The only thing that went over there, so far as we are advised, was your statement that was filed in the other court—in the United States court—and transferred to the county court?

Mr. ANDERSON. I have a copy of a statement that I made over in the county court.

Mr. BARD. Yes; I understand you made a statement over at the county court, but you filed no sworn complaint over there?

Mr. ANDERSON. The case was given to them, and they acted, I think, in the same manner that the Federal court—I gave my evidence in the Federal court, and they examined my evidence for seven days, before I gave a sworn statement or complaint.

Mr. GARD. Do I understand that as a result of your activities with the Messrs. Goldsmith, you got your films back?

Mr. ANDERSON. The film was returned—that is, part of it—two days ago, through the attorneys of Mr. Bard and Keen. Only part of the film was returned; part of it is still in their possession, or they have disposed of it. One part of film has been returned to me.

Mr. GARD. Your firm is the Liberty Film Co.?

Mr. ANDERSON. The Liberty Film Co., and the Banner Film Co., and I represent also the Navajo Film Co.

Mr. GARD. Are you a film broker?

Mr. ANDERSON. No, sir.

Mr. GARD. Are you a producer?

Mr. ANDERSON. I am the secretary of the Liberty Film Co.

Mr. GARD. They are manufacturers?

Mr. ANDERSON. Yes; they are manufacturers; producer of films; and I am the secretary of the company.

Mr. GARD. What is the name of the company?

Mr. ANDERSON. The Liberty Film Co.

Mr. GARD. And what is this other name?

Mr. ANDERSON. The Banner Co.

Mr. GARD. What do they do in that company?

Mr. ANDERSON. We manufacture films.

Mr. GARD. Oh, you have a number of them?

Mr. ANDERSON. Yes, sir.

Mr. GARD. Then, if Mr. Wood had any connection with this matter in any way, in any financial way, in his private practice, that was before your complaint was filed?

Mr. ANDERSON. Yes, sir; I suppose so. I do not know that Mr. Wood ever had any connection with it.

Mr. GARD. At any rate, that would be a matter of which you have not any knowledge?

Mr. ANDERSON. I have no knowledge of that, except I have been informed, and I have heard the testimony to-day, and I was informed some two or three weeks after I had filed my complaint.

Mr. GARD. That is all.

Mr. NELSON. Have you had any conversation as to your testimony with Mr. Wood?

Mr. ANDERSON. Absolutely not.

Mr. NELSON. Or with Mr. Hershenstein?

Mr. ANDERSON. No, sir.

Mr. NELSON. You have had no conversation with them recently at all?

Mr. ANDERSON. I have not.

Mr. NELSON. When you started this action against Bard and Keen, had you knowledge of Mr. Wood's request preceding that?

Mr. ANDERSON. No, sir.

Mr. NELSON. That had occurred before, as a matter of fact?

Mr. ANDERSON. Yes, sir.

Mr. NELSON. That is, you know of it since?

Mr. ANDERSON. Yes, sir.

Mr. NELSON. You had no knowledge whatever of his having moved in the matter?

Mr. ANDERSON. Absolutely not. I did not know Mr. Wood. I did not know that the Pike's Peak Co. had employed an attorney to secure the films.

Mr. NELSON. Had you had any correspondence in any other way which informed you that the Pike's Peak Co. were trying to get films returned from Bard & Keen?

Mr. ANDERSON. We had a letter from Mr. Smith, who was the agent of the Pike's Peak Co., advising us in California that he was to withdraw his film.

Mr. NELSON. That what?

Mr. ANDERSON. That he was going to withdraw his film from the Associated Film Corporation, but I did not know that they had any trouble in doing so.

Mr. NELSON. How?

Mr. ANDERSON. I did not know that they had any trouble in doing so at the time that I filed my complaint.

Mr. NELSON. He did not state in that letter that Mr. Wood had called upon Bard & Keen?

Mr. ANDERSON. I think that preceded; this letter was written just before he attempted to secure his film—I think so.

Mr. NELSON. Your action was positively independent of anything Mr. Wood did?

Mr. ANDERSON. Absolutely.

Mr. NELSON. And you went at once to the district attorney's office, rather than start a civil suit; is that it?

Mr. ANDERSON. I demanded the film from Mr. Bard. I did not have anything to do with Mr. Keen particularly.

Mr. NELSON. Did you offer settlement?

Mr. ANDERSON. And I asked for settlement, because he had sold a certain film belonging to us, and he had also rented a certain film and had not accounted for it, and so I asked for a settlement, and he refused. He had also made an arbitrary charge on the books

against our company, together with other companies, so as to offset any credit which might appear on the books in favor of our companies.

Mr. GARD. How much did you pay Mr. Hershenstein for his services?

Mr. ANDERSON. What did I what?

Mr. GARD. What did you pay Hershenstein for his services?

Mr. ANDERSON. Up to the present I have not offered him any pay.

Mr. GARD. That is interesting. How much do you intend to offer him?

Mr. ANDERSON. That I intend to offer Mr. Hershenstein?

Mr. GARD. You said "Up to the present I have not offered him any pay." How much do you intend to offer him?

Mr. ANDERSON. I do not intend to offer Mr. Hershenstein anything. He has not asked me for a thing.

Mr. GARD. We are glad to know that. You said up to the present time you had not offered him anything.

Mr. ANDERSON. Did I state that? Well, I do not intend to offer him. He has not made any request for a cent from me.

Mr. GARD. I would like to be informed why it was that you would seek the process of the Federal grand jury to obtain a film, when there would seem to be abundant civil authority to obtain it by a replevin suit?

Mr. ANDERSON. I took up this matter with Mr. Goldsmith. I spoke of securing it on a replevin. He asked me if I knew where the film was. I told him "No," that I had attempted to secure the information as to the whereabouts of the film from Mr. Bard and Keen, but I did not at that time know where it was. I presented this letter to him, sent to us on the 16th of July, wherein Mr. Bard asked us to forward film to him, and in this letter he promised to pay for this film on a certain basis upon its arrival in New York. That is the reason I presented it to Mr. Goldsmith, and he advised me to take it up in the Federal court.

Mr. CARLIN. Let me ask you this question: Who advised you to take it up with the district attorney for the county of New York?

Mr. ANDERSON. The United States—pardon me: I did not get your question.

Mr. CARLIN. I say, who advised you to take it up with the district attorney for the county of New York?

Mr. ANDERSON. No one advised me. I told Mr. Hershenstein that I was not satisfied to let it go, having had the referee pass upon it, and that I was going to take it up in the State courts.

Mr. CARLIN. Did you not arrange with Mr. Wood, or get Mr. Wood to send you to the district attorney's office?

Mr. ANDERSON. I took it up with Mr. Hershenstein, and he took me into Mr. Wood and I asked both of them.

Mr. CARLIN. What happened then?

Mr. ANDERSON. I ask the two of them. I had first asked Mr. Hershenstein who I should call for at the district court, and he advised me to call on Mr. Dooling or Mr. Black.

Mr. CARLIN. My question is, after you got into Mr. Wood's office what happened?

Mr. ANDERSON. Well, Mr. Hershenstein spoke to Mr. Wood, and I think advised him that I was taking the case over to the criminal

court, and Mr. Wood called up Mr. Dooling, I think it was, and advised him that Mr. Anderson was coming over.

Mr. CARLIN. And Mr. Wood introduced you over the telephone to the district attorney of the county of New York?

Mr. ANDERSON. Well, you might call it that; yes. He said that Mr. Anderson would be over.

Mr. CARLIN. You have gotten some of your property back; how did you get it?

Mr. ANDERSON. Part of it; through the attorneys for Mr. Keen and Bard.

Mr. CARLIN. Why did they turn it over to you; do you know?

Mr. ANDERSON. Yes; I think I understand that.

Mr. CARLIN. Well, tell us.

Mr. ANDERSON. Last Monday Mr. Goldsmith called up Mr. Whitney, who is associated with Mr. Wise, the attorneys for Mr. Bard and Keen, and they made an appointment to meet at luncheon, and Mr. Whitney had formally stated that they were ready to return the film, and so the arrangements was made.

Mr. CARLIN. What arrangements were made?

Mr. ANDERSON. That he would return the the film.

Mr. CARLIN. That he would return the film?

Mr. ANDERSON. Yes.

Mr. CARLIN. Was there any promise or contract or agreement that there should be no indictment, if that was done?

Mr. ANDERSON. No, sir; absolutely not.

Mr. CARLIN. Why did he have to go to the district attorney's office to arrange to return the film? Could he not have done that without going to the district attorney's office?

Mr. ANDERSON. I think, perhaps, that came up at the meeting. I was examined partly by Mr. Embree and Mr. Brogan, and Mr. Brogan, at least at that time, thought I had a case, and Mr. Brogan and myself argued the point with Mr. Embree, and Mr. Embree explained the difficulty in bringing up a case of this sort before the jury—the film question is rather difficult to explain—and in some manner it came up that I said that if there was no case, and they passed upon it, why, I was satisfied; I would sacrifice the film and go back to California.

Mr. CARLIN. When did you first learn the fact that there was no case?

Mr. ANDERSON. How is that?

Mr. CARLIN. When did you first learn that the district attorney's office thought there was no case?

Mr. ANDERSON. This morning.

Mr. CARLIN. In this court room?

Mr. ANDERSON. Yes, sir.

Mr. CARLIN. Why did you suppose that Mr. Goldsmith and Mr. Whitney had the conference?

Mr. ANDERSON. Well, because Mr. Whitney represented Mr. Bard and Mr. Keen; Mr. Goldsmith represented myself, and I think they were anxious to effect some sort of settlement.

Mr. CARLIN. You mean by that that you were anxious to get the property back, and if you got your property, then you had no further interest in the criminal prosecution; is that it?

Mr. ANDERSON. No, sir; I had interest in the criminal prosecution; but I have a chance to sell some of the film, and I was anxious to secure the film at this time, because I have sale for it.

Mr. CARLIN. As a matter of fact, did you not express your approval and satisfaction at the idea that if your property was returned that the criminal proceedings should be dropped?

Mr. ANDERSON. No, sir.

Mr. CARLIN. And you were not satisfied that it should be dropped?

Mr. ANDERSON. I am not.

Mr. CARLIN. You did not employ Mr. Wood—your firm?—It was another company entirely, was it not?

Mr. ANDERSON. Employ Mr. Wood?

Mr. CARLIN. Yes.

Mr. ANDERSON. No, sir; I did not know Mr. Wood.

Mr. CARLIN. It was some other company. We will excuse you, Mr. Anderson.

(Witness excused.)

Mr. CARLIN. Is Mr. Louis Berger present in the court room?

A VOICE. Yes, sir.

TESTIMONY OF LOUIS BERGER.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. BERGER. I reside at 1421 Crotona Avenue, Bronx, New York.

Mr. CARLIN. Mr. Berger, what is your name, address, and occupation?

Mr. BERGER. I have given my name to the stenographer.

Mr. CARLIN. What connection did you have with this criminal indictment or warrant against Keen?

Mr. BERGER. No connection at all, sir.

Mr. CARLIN. Do you know Keen?

Mr. BERGER. I know him; yes, sir.

Mr. CARLIN. Were you present when Mr. Wood called on him about this matter?

Mr. BERGER. No; I was not.

Mr. CARLIN. You were not there?

Mr. BERGER. No, sir.

Mr. CARLIN. Did you not go there with Mr. Wood?

Mr. BERGER. Sir?

Mr. CARLIN. Did you not go there with Mr. Wood?

Mr. BERGER. No; I knew nothing of that whole affair. The only connection I had with that concern was that we have done the work for them of printing and developing films. That is all I know about them. Nothing further.

Mr. GARD. Were you working for Keen?

Mr. BERGER. Not for Keen; no, sir.

Mr. GARD. What?

Mr. BERGER. Not for Keen.

Mr. CARLIN. You used to supply him with printed matter, did you not?

Mr. BERGER. No; this is film printing; not printed matter.

Mr. CARLIN. Film printing?

Mr. BERGER. Yes.

Mr. CARLIN. Why did you stop that?

Mr. BERGER. Stop what?

Mr. CARLIN. Supplying him with film printing?

Mr. BERGER. I believe you gentlemen do not understand just what I mean to say. We have a film developing and printing plant where we do developing and printing for many people besides them, and they were simply one of our customers who came and gave us orders from time to time to do some work for them.

Mr. CARLIN. You stopped supplying them?

Mr. BERGER. They did not give us any further orders.

Mr. CARLIN. Was that your only reason for stopping supplying them?

Mr. BERGER. That is the only reason.

Mr. CARLIN. You may stand aside.

(Witness excused.)

Mr. CARLIN. Is Henry Siegel here?

A VOICE. Yes, sir.

TESTIMONY OF HENRY SIEGEL.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. WALSH. Is your name Harry Siegel?

Mr. SIEGEL. No; it is Henry Siegel.

Mr. WALSH. Henry Siegel?

Mr. SIEGEL. Yes.

Mr. WALSH. You are not the Harry Siegel who has information about the Oppenheimer bankruptcy or Oppenheimer indictment?

Mr. SIEGEL. No.

Mr. WALSH. You are not the Harry Siegel who was called before the grand jury?

Mr. SIEGEL. No.

Mr. CARLIN. You have got the wrong man.

Mr. WALSH. Yes; we have the wrong Siegel.

(Witness excused.)

Mr. CARLIN. Now, put Mr. Doran on the stand.

TESTIMONY OF FRANK DORAN.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. DORAN. I reside at 186 Globe Avenue, Jamaica, Long Island.

Mr. WALSH. Mr. Doran, you are the brother of Miss Doran, the lady who testified here this morning?

Mr. DORAN. I am; yes, sir.

Mr. WALSH. And have you been associated with her in her work as an authoress?

Mr. DORAN. Yes, sir.

Mr. WALSH. Have you had any dealings with the United States district attorney's office in connection with complaints made by her?

Mr. DORAN. Yes, sir.

Mr. WALSH. And those complaints, briefly, were what?

Mr. DORAN. I made the original complaint—the Paul Scott case—in March, 1912.

Mr. WALSH. That was before Mr. Marshall was in office, was it not?

Mr. DORAN. Yes; but leads right up to it quickly, because Mr. Gruber, the assistant, remained in office until Mr. Marshall came in, and for some time later.

Mr. WALSH. Can you tell us, briefly, what the chronological events were in connection with your complaint in that case?

Mr. DORAN. Yes.

Mr. WALSH. What followed after that complaint—what action?

Mr. DORAN. The Scott hearing took place here on March 28, 1912.

Mr. NELSON. You heard your sister's testimony, did you not?

Mr. DORAN. Yes.

Mr. NELSON. Please do not go over the same ground, but bring out facts that you think she omitted.

Mr. DORAN. Yes.

Mr. NELSON. Because there is no use in going over the ground she has covered.

Mr. DORAN. Then, I will come down to this: At the Scott hearing, on March 28, 1912, before Commissioner Shields, perjury was committed by Paul Scott and his witness, Jean Barrymore. A few days after that I reported the matter to Mr. Gruber, that perjury had been committed, and he said "Oh, that will all come out in the next hearing, and the hearing is to be continued." Commissioner Shields said: "Decision reserved."

I learned a long time afterwards that Scott was dismissed the same day of that hearing. So we went along during the entire year, practically, of 1912, and I was running in here repeatedly to see Mr. Gruber, and Mr. Gruber said "Scott will be indicted"; he constantly repeated that. We struggled along, and in May, 1912, my sister made a complaint against W. F. Burke—"Billy Burke," of The Bronx. He sold her a copy of her own play for \$5. Mr. Griffith was the district attorney in that case. Mr. Griffith remained for some time under Mr. Marshall. We got no satisfaction there; and, finally, in February, 1913, I think—I have the date here—yes, sir; there was a grand jury hearing. Mr. Griffith said that they did not deliberate—the grand jury—on that case, and my sister was called again in April, 1913. That was on the 2d of April. On the 28th of that month, I think, Mr. Marshall was then in office four days, and I saw Mr. Griffith, and I said, "What about the decision in the Burke case before the grand jury?" And he said, "The grand jury failed to indict." Later I saw Mr. Griffith, and in May of that year I saw him, and I said, "What about this case now? What are you going to do about it?" And again he told me that the grand jury failed to indict. I said, "You can put it up to another grand jury, can you not?" He said, "Oh, yes; I can put it up to as many grand juries as I like," and he says, "I can insist on an indictment, which is frequently done."

Mr. NELSON. Are you quoting him?

Mr. DORAN. I am quoting Mr. Griffith now.

Mr. NELSON. He said he "could insist on an indictment, which is frequently done"?

Mr. DORAN. Yes; he "could insist on an indictment, which is frequently done." I said, "You should not have to insist on this, because the man confessed and there was no defense." He says, "Well, how-

ever, before I put it up to another grand jury I will confer with Mr. Marshall."

Mr. CARLIN. I want to ask you one question right here and see if I get this in my mind. I was out for a minute or two this morning. Your complaint is that plays and matters of that sort which had been copyrighted had been pirated by somebody else?

Mr. DORAN. That is it exactly; yes, sir.

Mr. CARLIN. Did you ever bring a civil action against that somebody else for damages?

Mr. DORAN. No, sir; we did not.

Mr. CARLIN. Why?

Mr. DORAN. Why? Because a criminal statute had been violated. We were constantly reminded of the civil statute each time we came in by Mr. Griffith.

Mr. CARLIN. The fact that a criminal statute had been violated did not prevent you from pursuing your civil remedy. You had both.

Mr. DORAN. Yes; but we did not do that.

Mr. CARLIN. Why?

Mr. DORAN. Because we did not consider them responsible. They were play thieves, and we could not hope to recover anything from them. Take the case of Alexander Byers, in Chicago; he is a notorious play thief, known all throughout the profession, and he is reputed to be worth \$1,000,000, but nobody ever thinks of suing Alexander Byers, and you can buy most any play from him for \$5 or \$10, but you could not get a dollar out of him if you sued him, and you could not get anything out of Paul Scott or Billy Burke. In the case of Sipe, my sister explained how that was settled. We complained to Washington repeatedly, and finally we got the Sipe case before the examiner, after my sister had been to Washington. There was no hearing in the Sipe matter until about eight months after the arrest. That hearing occurred in February, 1913. I came in here to Mr. Content on February 18, 1914, to prepare another complaint against Paul Scott, and also asked if the prosecution against Scott and Barrymore for perjury committed before Commissioner Shields, which I had constantly been asking about, had been begun. Mr. Content dodged it and he referred me to Mr. Wood. Now, here is a copy of the letter which I addressed to Mr. Marshall after my conversation with Mr. Wood.

Mr. CARLIN. Just file the copy.

Mr. DORAN. Yes; I will. But Wood, when I entered the office, he tried to bluff me right off the bat.

Mr. NELSON. What did he say?

Mr. DORAN. I will tell you. He says "That case? Why, that is outlawed by the statute of limitations." I said "Nothing of the kind; the statute of limitations is three years, and not two years," and two years had not yet been reached. He said "Well, how much money have you got; how much money has your sister got? Have you got enough money to pay for this charge of perjury which you wish to make?" I says, "The laws are for the people, and in criminal statutes there is no fee. I am one of the people, and I want some of the laws, and I did not come in here to be bluffed by you, and if I do not get some of the laws, I will go ahead and find out why." When he saw he could not bluff me, he backed down somewhat, and then said "Oh, go and settle the thing between yourselves."

Another thing he said, "You haven't got the evidence." I said, "How do you know I haven't got it?" I said, "Have I ever laid the matter before you before?" He said "No." I said "How do you know I haven't got the evidence? Did I every submit this complaint to you before?" He said "No." However, he stated that he would not take the complaint nor allow any assistant in the office to take it. I then attempted to see Mr. Marshall; called at his office immediately; I was told he was too busy to see me. Then I went home and I addressed this letter to Mr. Marshall—that is a copy—and sent it to him under a registered seal.

Mr. WALSH. The letter you refer to is a letter dated February 18, 1914?

Mr. DORAN. Yes, sir. No reply. On February 24, 1914, here is a copy of a letter I addressed to President Wilson, with charges inclosed—five specific charges against Roger B. Wood. Do you want that?

Mr. NELSON. We have that already in your sister's testimony.

Mr. DORAN. Yes. I think it was sent to Washington. In the summer of 1914, after repeated complaints to Washington, Mr. M. C. Masterson called at our home. He is from the examiners' department. We had several conferences with Mr. Masterson, and the result of his report, we do not know, as he said we would never know. I said, "Why is that? Are we not supposed to know the result of the investigation?" He said, "That is the system." I says, "Well, you tell us what was done down in New York, anyway." Well, while he was down here on our complaints, during the investigation, he said that he saw Mr. Content—or he saw Mr. Wood, and he saw Mr. Marshall, and he saw Griffith, and he saw Gruber; he said, "They practically admit everything—even Wood's asking for the money," and he said "He tried to bluff me." I said, "What was the attitude of the others; what did Gruber say?" He said, "Gruber said he thought he would tire you out running there."

Mr. NELSON. Now, right there, what was his opinion of your case?

Mr. DORAN. Who? Mr. Masterson?

Mr. NELSON. Yes.

Mr. DORAN. Well, he was not in a position to express an opinion, or at least he would not.

Mr. NELSON. Did he seem to sanction their attitude?

Mr. DORAN. Oh, no; he did not; and he said that they did not deny anything that we said. He took two affidavits, one from my sister and one from myself, on the 25th of June, during that hearing: they were left with him; I suppose they are on file in Washington. That covers the case pretty well up to that time. Now, then, let us see what else I have.

Mr. WALSH. You had a talk with a man named Content in the district attorney's office?

Mr. DORAN. Yes.

Mr. WALSH. That was in relation to the charges your sister had made?

Mr. DORAN. Yes.

Mr. WALSH. Tell the committee what occurred—what Mr. Content told you.

Mr. DORAN. I came in here on the 24th or 25th of November. Wait a moment; I will get the date—and my sister had received in that time the return of the exhibits and a letter from Mr. Marshall.

Mr. CARLIN. Just answer the question. Tell us what Mr. Content told you.

Mr. DORAN. I spoke to Mr. Content, and I said, "What about the indictment in the Burke case? You got an indictment on Comstock for a violation of the copyright statute, and he was held under bail, I learned." I said, "Why could you not get an indictment on Burke?" He said, "I could get an indictment on Burke, but Mr. Marshall says 'No indictment,' and Mr. Marshall is the boss." When I reported that to my sister she complained to Washington.

Mr. CARLIN. Have you any other questions, Mr. Walsh?

Mr. WALSH. On any other occasion did he use strong language to you?

Mr. DORAN. Yes; I have a copy of that right here. March 25, 1915. There is a copy of the letter. I called here to see Mr. Content in reference to the witness fees, which had not been paid us, etc.; we had never been notified that we were to receive witness fees. Some are standing to this date, but that is under Mr. Wise, and Mr. Content was very sore about the many complaints that my sister made to Washington, and a mere mention of the Burke case made him fly off the handle, and this is what happened. I have it here. He pounded the table and carried on something fierce; he said, "Your sister can go to hell, and Washington can go to hell, President Wilson and Attorney General Gregory can go to hell; the Government be damned; I don't have to work for the Government; I can live without this job; what do I care for Washington or any of you? To hell with all of you." He pounded the table and yelled like a wild man.

Mr. CARLIN. Who said that?

Mr. DORAN. Content. "I will take no orders from Washington, or from anybody but Marshall."

Mr. GARD. Are you testifying from recollection or from a statement?

Mr. DORAN. I wrote it down just after it happened. I told Content "If you would make that remark to my sister, she would promptly slap your mouth."

Mr. NELSON. Do you speak from experience?

Mr. DORAN. I certainly can, and she would in a minute. He said, "Well, I would say it to her." "Look out," I said, "you are saying something now about my sister personally. I warn you to stop." That is about all on those lines. The rest is a complaint of which I think you have a copy.

Mr. CARLIN. The committee will excuse you now, sir, unless you have some matter that you think we have overlooked that you would like to bring to our attention.

Mr. DORAN. Are there any questions to be asked?

Mr. CARLIN. No. I think we understand the situation. The committee will take a recess until to-morrow morning at 10.30.

(Whereupon, at 4.20 o'clock p. m., the subcommittee adjourned until to-morrow, Friday, March 3, 1916, at 10.30 o'clock a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
New York, Friday, March 3, 1916.

The subcommittee met at 10.30 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson. Hon. Frank Buchanan and Walter J. Walsh, as counsel.

Mr. CARLIN. The committee will come to order. Is the reporter of the New York Times in the court room?

Mr. G. F. DOBSON, jr. No.

Mr. CARLIN. Was he here yesterday?

Mr. G. F. DOBSON, jr. No, sir; he took the City News copy, I think. Oh, yes, he was here for an hour yesterday afternoon.

Mr. CARLIN. Do you know his name?

Mr. G. F. DOBSON, jr. Yes.

Mr. CARLIN. What is his name?

Mr. G. F. DOBSON, jr. Holme.

Mr. CARLIN. Do you know his initials?

Mr. G. F. DOBSON, jr. No; he will be here to-day.

Mr. CARLIN. Will you call my attention to it when he comes in?

Mr. G. F. DOBSON, jr. Yes.

Mr. CARLIN. Mr. Clerk, give me a list of the witnesses summoned to-day. Is Jacob Engel in the court room?

Mr. SLADE. I think all of the witnesses are in the hall.

Mr. CARLIN. The sergeant at arms will call Jacob Engel.

Mr. ENGEL. I want to apologize to the committee. I had a court engagement which kept me. I only received the subpoena at 10.15 this morning.

TESTIMONY OF JACOB B. ENGEL.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Walsh, do you want to examine Mr. Engel?

Mr. WALSH. May I ask that the witness be excused and that Mr. Siegel be called?

Mr. CARLIN. Is Mr. Siegel here?

Mr. WALSH. I think he is.

Mr. CARLIN. We will excuse you for a few minutes, Mr. Engel. Take the stand, Mr. Siegel.

(Witness excused.)

TESTIMONY OF HARRY SIEGEL.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. WALSH. Mr. Siegel were you ever in the employ of one Samuels?

Mr. SIEGEL. I was.

Mr. WALSH. Joseph Samuels?

Mr. SIEGEL. Joseph Samuels & Co.

Mr. WALSH. Was it a corporation?

Mr. SIEGEL. No, sir; not the time that I was employed there.

Mr. WALSH. Partnership?

Mr. SIEGEL. Yes.

Mr. WALSH. And in what capacity were you in its employ?

Mr. SIEGEL. I was their confidential employee.

Mr. WALSH. By the way, what is your occupation, Mr. Siegel?

Mr. SIEGEL. I am bookkeeper and cashier.

Mr. WALSH. Were you in their employ at the time they went into bankruptcy?

Mr. SIEGEL. I was.

Mr. WALSH. By the way, did they file a voluntary petition or were they forced into bankruptcy, do you remember?

Mr. SIEGEL. I believe they were forced into bankruptcy.

Mr. WALSH. How long had you been in their employ prior to their being forced into bankruptcy?

Mr. SIEGEL. In 1910, I believe—1910, 1911, and 1912.

Mr. WALSH. Now, were you ever called as a witness to testify before the United States grand jury?

Mr. SIEGEL. I was.

Mr. WALSH. In what action, if any?

Mr. SIEGEL. In Joseph Samuels & Co., bankrupts.

Mr. WALSH. Did you appear before the grand jury?

Mr. SIEGEL. I did.

Mr. WALSH. Upon how many occasions?

Mr. SIEGEL. Oh, I guess about 25 times or so.

Mr. WALSH. Did you appear that number of times before the grand jury?

Mr. SIEGEL. I did; that is, I must have been in this building about 50 times, between the district attorney's office and the grand-jury room. I guess the records will show just how many times I was paid for appearing in the grand-jury room.

Mr. WALSH. Now, Mr. Siegel, when you were called here to this building, were you examined by anybody in connection with the United States district attorney's office?

Mr. SIEGEL. I was.

Mr. WALSH. By whom?

Mr. SIEGEL. Samuel Hershenstein and Roger Wood.

Mr. WALSH. And Mr. Wood?

Mr. SIEGEL. Yes, sir.

Mr. WALSH. Along what lines were you interrogated?

Mr. SIEGEL. Along the facts of the bankruptcy of Joseph Samuels & Co.

Mr. WALSH. Now, did that examination take place before you were called before the grand jury?

Mr. SIEGEL. It did. I made a statement to the district attorney's office.

Mr. WALSH. When did you make that statement?

Mr. SIEGEL. I believe that was either December, 1913, or early in January, 1914.

Mr. WALSH. That statement was made to what district attorney?

Mr. SIEGEL. Hershenstein.

Mr. WALSH. Was that statement taken down by the stenographer?

Mr. SIEGEL. It was.

Mr. WALSH. Well, now, in the course of that examination, were any directions given to that stenographer to include or exclude any portion of the statements you made?

Mr. SIEGEL. There was some side talk that the stenographer was told not to take down; certain facts, until the discussion was over; and certain questions were asked me regarding the information in reference to Samuels and the attorney in the case, Herman H. Oppenheimer, and as it seemed to me then that the information was—if it was satisfactory it went in, and if it didn't, why, it just stayed out.

Mr. WALSH. You say Mr. Herman Oppenheimer was the attorney in the case?

Mr. SIEGEL. Mr. Herman H. Oppenheimer was the attorney for Joseph Samuels & Co.; yes.

Mr. WALSH. He was the attorney in the bankruptcy case, was he?

Mr. SIEGEL. Yes, sir.

Mr. WALSH. Do I understand you were inquired of concerning his doings?

Mr. SIEGEL. Yes.

Mr. WALSH. Now, did you tell Mr. Wood and Mr. Hershenstein all you knew in connection with the bankruptcy affair of Samuels & Co.?

Mr. SIEGEL. I did.

Mr. WALSH. Did they at any time ask you to change any statement you made to them?

Mr. SIEGEL. Why, I would not change anything. I just gave them the actual facts as I knew them, and that was the end of it.

Mr. WALSH. Did anybody ask you to change your statement?

Mr. SIEGEL. Well, I was asked to make certain statements, but I refused to make them.

Mr. WALSH. What statements were you asked that you refused to make?

Mr. SIEGEL. Regarding Herman Oppenheimer.

Mr. WALSH. Just tell the committee about that, if you will, what was said to you about Herman Oppenheimer and what statement you have to make in that connection?

Mr. SIEGEL. After the first statement was made, I believe it contained about anywhere from 80 to 100 typewritten pages, I went over it and I corrected it. Subsequently, some time during March or April, 1914, I was again called before the grand jury, and before that time I was told by Hershenstein that they were going to get another indictment, as the first indictment was not any good, and they were going to get Samuels and Anderson and Herman Oppenheimer, and they didn't care just exactly how. I went into the grand jury room and testified, and during the testimony there the stenographer was told to wait a minute, and the same course of events—the same as when I made my statement to Mr. Hershenstein personally—followed. "Now, just don't take this down. I want to ask Mr. Siegel something." He asked me several questions regarding Mr. Oppenheimer. "Never mind, stenographer, you don't have to take that." Of course, they were favorable to Mr. Oppenheimer. I says, "Why is that, Mr. Hershenstein, you don't put that down?" "Well," he says, "it isn't necessary." I says "All right," and I let it go at that. At one time during the examination the foreman of the grand jury got up and says to me, "Why, you are a blackmailer, according to Mr. Hershenstein." May I be permitted to use the exact language?

Mr. CARLIN. Yes.

Mr. SIEGEL. Why, I says, "You dirty son of a bitch, whoever told you I am anything like that? What right have you got to call me anything like that? I never took anything from anybody, and I would not stand it from you." A couple of the grand jurymen got up and said to me, "Stop that kind of language." I says, "If this grand jurymen will retract what he says, I will apologize; if not, I will amplify." Through the course of the examination things quieted down, and I continued testifying, and that kind of stuff was used on me continually through that examination. Finally, I was let alone until November, 1914, and I got another call to come down and the same trouble again. Mr. Hershenstein took me up before the grand jury. Before that I had been in his office, and he said that he wanted me to testify against Oppenheimer, and I says, "I don't know anything; there is no use; I won't go up and testify." I says, "I have given you all the testimony I know, and that's all you are going to get." "Well," he says, "we will go up." I says, "Now, listen. I am not going up unless I get immunity. I have done something, and I don't want any comeback. You promised me immunity before," I says, "and it was just a question whether you wanted to indict me or you didn't want to indict me," and he says, "All right, go up, anyhow." We went up into the grand jury room, and I was asked the formal question—my name and address—and I gave them, and when I was asked whether I was bookkeeper for Joseph Samuels & Co., I refused to testify, on the ground that it might tend to incriminate or degrade me.

The grand-jury foreman asked me whether I would come back the next day—what the trouble was. I told him I asked Mr. Hershenstein for immunity and he refused to give it to me. He says, "Are you willing to come back to-morrow at 11 o'clock?" I says, "Yes, sir; I am." I walked out with Hershenstein. He says, "What do you want?" He says, "We are going to get this bunch," and he mentioned the names of Samuels and Anderson, Dietz and Oppenheimer, "And you might as well do as I ask you." I says, "I am not going to do anything of the kind; I am through doing. I told you all that I know and I can't tell you any more." I says, "How about this immunity? I have got to get the right kind or I don't take any." He says, "What do you want?" I says, "I am going to bring a lawyer in here and Mr. Marshall has got to give this man a promise of immunity for me." I went up to see a friend of mine, Benjamin Kronenberg, an attorney. I saw him, and he says, "I will tell you, this bunch down at this office is so rotten that I don't want to take a chance." He says, "I wouldn't do it for a hundred dollars." I says, "You have got to do it for me, because I can't afford to take any chance." He says, "Well, I will tell you what you do. My time is worth something. I have got a case in the morning and I will do it for you for \$25." I didn't have the money. I had to borrow it to give \$25 to Ben Kronenberg. I finally got him down here and came into Mr. Hershenstein, and after a little argument finally got into Mr. Marshall's office, and Mr. Hershenstein started to talk and I said to Mr. Hershenstein, "You are not here for that purpose. Mr. Kronenberg is here for a purpose, and I want him to do the talking to Mr. Marshall." Then Mr. Hershenstein kept quiet and Mr. Marshall promised Mr. Kronenberg that I would get immunity. Well, I got the immunity.

Mr. WALSH. Just a minute. Before that had you been threatened by anyone that you would be indicted?

Mr. SIEGEL. I was; by both Mr. Wood and Mr. Hershenstein.

Mr. WALSH. What did they say in that respect?

Mr. SIEGEL. Well, I got a telephone call one afternoon about 4 o'clock to come down, that Mr. Wood wanted to see me. I came down and Mr. Hershenstein took me into Mr. Wood. Mr. Wood said to me, "Now, Siegel, I understand you are going around with or associating with the people in this case, and I want you to stop it. You have got to cut out going with Ike Anderson and with Oppenheimer and that bunch." I says, "Listen, Mr. Wood, anybody that don't like what I do, whether it is you, Mr. Marshall, or Mr. Hershenstein, can go to hell." I says, "I am going to pick my company; if I know a man is innocent I am going to associate with him; I don't care who says so, whether you or a hundred others like you." That cut short. They followed me out in the hall and said something to me. I told them to go to hell again and went down the elevator and went home.

Mr. WALSH. Did either of them, at any time, say they would procure an indictment against you?

Mr. SIEGEL. Yes, sir; Mr. Hershenstein, some time during the early part of 1914—I believe it was 1914—and in proof of that I had to go to the committee, Leo Strauss, Mr. Alexander S. Webb, and Mr. O. Cheney, who were the committee in the Samuels case. They had charge of the Samuels bankruptcy. Mr. Hershenstein said that I was going to be indicted, and he couldn't do anything about it, and he didn't care about it, and all that sort of stuff. I said, "Where do I come in for such a thing?" I says, "I told you everything I know." I says, "You have got indictments against the fellow that committed the crimes," I says. I says, "Where do I come in to be indicted?" He says, "I can't help it; that's the orders, and that's all there is to it." I had to go down to Mr. Strauss, and I begged Mr. Strauss, and finally the next morning at 10 o'clock, or half past 9, they came down and saw Mr. Hershenstein and Mr. Marshall, and the indictment was not handed down against me.

Mr. WALSH. Who came down?

Mr. SIEGEL. This committee, Mr. Webb, Mr. Cheney, and Mr. Strauss.

Mr. WALSH. Now, Mr. Siegel, was Mr. Samuels indicted?

Mr. SIEGEL. He was.

Mr. WALSH. Was he ever tried?

Mr. SIEGEL. No, sir.

Mr. WALSH. What became of his case, do you know.

Mr. SIEGEL. I do not know. The last thing I heard of it, it was put over a year. He pleaded guilty to several indictments charged against him. The case was put over for one year.

Mr. WALSH. Was ever a sentence entered, do you know?

Mr. SIEGEL. Not to my knowledge.

Mr. WALSH. Has he ever done any time?

Mr. SIEGEL. No, sir.

Mr. WALSH. Now, at one time did you go away from New York City?

Mr. SIEGEL. I did.

Mr. WALSH. Before you went away did you ask anybody's permission to go away?

Mr. SIEGEL. I did.

Mr. WALSH. Whose permission did you ask?

Mr. SIEGEL. Mr. Hershenstein's.

Mr. WALSH. Why did you want to go away?

Mr. SIEGEL. Because I was all tired out—played out. I was half a wreck from the treatment and the constant abuse in this office.

Mr. WALSH. And you went where?

Mr. SIEGEL. I went to Lakewood, N. J.

Mr. WALSH. Why did you have to ask Mr. Hershenstein for permission to go to Lakewood, N. J.?

Mr. SIEGEL. I was afraid he would send a marshal after me.

Mr. WALSH. Did you get permission to go from him?

Mr. SIEGEL. I did.

Mr. WALSH. Did you go?

Mr. SIEGEL. I did.

Mr. WALSH. State whether or not you were summoned back from there.

Mr. SIEGEL. I was summoned back Monday morning. I left New York Saturday morning and I had to get back here Monday morning—got a telephone call from Hershenstein.

Mr. WALSH. What was the occasion of that; what did he bring you back for?

Mr. SIEGEL. Some more of the same stuff. He wanted some more testimony which I could not give him.

Mr. WALSH. What was the testimony he wanted that you could not give him?

Mr. SIEGEL. In reference to Oppenheimer.

Mr. WALSH. Do I understand he wanted you to say things that indicated that Mr. Oppenheimer was guilty of some offense?

Mr. SIEGEL. Yes; certainly. He told me I was lying, he knew that I was lying, and I knew that I was lying, in the face of the fact that he had got indictments against Jack Samuels and that everything that I told—the analysis of accounts that I had made up was true and proved; and afterwards the man confessed that he did exactly as I said he did. He said I lied, anyway.

Mr. WALSH. What occasion was there for calling you back so many times and questioning you so many times, do you know?

Mr. SIEGEL. It was simply, in my opinion now, a persecution to make me say just what was wanted to be said; that is all.

Mr. WALSH. To make you say along what lines?

Mr. SIEGEL. Along any lines they wanted—what they wanted me to say. They wanted me to do different from what I actually wanted to do; that is all.

Mr. WALSH. I think that is all.

Mr. CARLIN. You can stand aside.

Mr. SIEGEL. Am I excused for the day, sir?

Mr. CARLIN. Yes.

Mr. SIEGEL. Thank you.

(Witness excused.)

TESTIMONY OF WILLIAM H. LEARY.

(The witness was duly sworn by the clerk of the subcommittee.)

Mr. CARLIN. Mr. Leary, I want to ask you with reference to the indictment against Oppenheimer. Do the records of your office disclose the number of indictments that were had against Oppenheimer?

Mr. LEARY. Yes, sir.

Mr. CARLIN. Do you recall the number?

Mr. LEARY. No; I do not; but I can find them quickly.

Mr. CARLIN. I would be very glad if you would ascertain the number of indictments, the various motions that were made in the case of each indictment, and the disposition of the motion.

Mr. LEARY. Yes.

Mr. CARLIN. And the date of the indictment; and then let us have that information to-day some time, if you please.

Mr. LEARY. Yes, sir.

Mr. GARD. Mr. Leary, what do you call the docket in your court wherein are enumerated, first, the return of the indictment, the filing of the indictment, any arraignment or plea, the record—in other words, the proceedings upon indictment?

Mr. LEARY. There is docket entry of every indictment that is handed up in this court.

Mr. GARD. What do you call the docket?

Mr. LEARY. Criminal docket.

Mr. GARD. Will you bring us—or would you want additional process to bring that criminal docket?

Mr. LEARY. Bring the dockets that these Oppenheimer cases are in?

Mr. GARD. Yes.

Mr. LEARY. Yes, sir; we have got them right here.

Mr. GARD. Bring those over.

Mr. CARLIN. Were there any indictments found that are not in the docket?

Mr. LEARY. No, sir; no indictments found not in the docket.

Mr. CARLIN. Every indictment that was returned by the grand jury is recorded?

Mr. LEARY. Is in that docket, sir, since I have had anything to do with it.

Mr. GARD. Do you recall how closely connected in time these Oppenheimer indictments were?

Mr. LEARY. I think they extended over a period—just a rough guess—of a year or two.

Mr. GARD. You can locate them for us?

Mr. LEARY. It seems some time since the first one was handed up. Yes; I can get them.

(Witness excused.)

TESTIMONY OF MAX STEUER.

(The witness was duly sworn by the clerk of the subcommittee.)

Mr. CARLIN. Mr. Walsh, will you go ahead with the witness?

Mr. WALSH. Mr. Steuer, have you given your name and address to the stenographer?

Mr. STEUER. I think the stenographer knows it, Mr. Walsh.

Mr. WALSH. Well, Mr. Steuer, you are a practicing attorney here?

Mr. STEUER. Yes, sir.

Mr. GARD. What is the gentleman's name, please?

Mr. STEUER. Steuer.

Mr. WALSH. Have you been practicing here for a number of years?

Mr. STEUER. Since 1893, sir. Admitted on the 29th of June, 1892; started to practice on the 25th of September, 1893.

Mr. WALSH. Mr. Steuer, do you know a young lady named Rae Tanzer?

Mr. STEUER. I saw her and spoke to her once—spoke to her twice and saw her once.

Mr. WALSH. And when was it you first saw her?

Mr. STEUER. It was in the early part of March.

Mr. WALSH. What year?

Mr. STEUER. I think it was last year.

Mr. WALSH. Where was it you saw her?

Mr. STEUER. At my office, 42 Broadway, in this city.

Mr. WALSH. Did she make a statement to you there then?

Mr. STEUER. She did.

Mr. WALSH. Will you tell the committee what the statement was?

Mr. STEUER. If the committee says I am privileged to tell it, I have no objection to telling it.

Mr. CARLIN. Well, sir, that is a question for you to determine; whether you consider the communication a privileged one or not. If you do, we won't question you.

Mr. STEUER. The communication was made to me under circumstances that I would regard as privileged. Subsequently, this young lady made a written request that I should narrate what she said to me to Mr. Marshall.

Mr. CARLIN. Which Mr. Marshall?

Mr. STEUER. The district attorney, sir; and on a subsequent occasion she signed a request and waiver that I should narrate what she told me to the grand jury sitting in this district.

Mr. CARLIN. You can go ahead with the statement. I think she has waived her privilege.

Mr. STEUER. I wanted to call your attention to this circumstance, otherwise I should have declined to say anything about the statement.

Mr. GARD. You must be the judge of that yourself. The communication was made to you. We will be glad to hear it.

Mr. CARLIN. While I feel it is not privileged under the circumstances, we would rather you determined that for yourself.

Mr. STEUER. It is quite some time since I have looked at section 835 of the code. I would like to look at it, if the committee does not mind.

Mr. CARLIN. We will let you do that, then. You can ask some other questions.

Mr. WALSH. I wanted to ask this witness about that statement and interrogate him concerning his calling Mr. Marshall's attention to it.

Mr. STEUER. I would prefer to testify, because I have got a court and jury waiting.

Mr. GARD. I think you can safely go ahead with your statement.

Mr. STEUER. I am perfectly willing to be guided by your judgment. Miss Tanzer called quite late one evening and told me that

she had been sent by a firm that she was employed with. She mentioned the name of the firm; I don't recall it at the moment, and told me that I could verify the fact that she had been sent by that firm, over the telephone, if I liked, and that her employer was in. I said it did not matter. I told her she could tell me what she wanted to see me about. She told me that in the month of October previous she had been walking west toward the Columbus Circle subway station; that something had occurred near the station which had attracted a gathering, and as she was walking by she observed that a man was looking at her closely, and as she got by she sort of turned back and looked at him, and then walked on. As she got to the ticket office of the subway station, and after she had purchased her ticket, she observed that this man was standing alongside of her and that he purchased a ticket, and when she got into the car, why, he got into the car and occupied a seat next to her.

That they started to converse with each other, the man having opened the conversation. That she was very much impressed with his intelligence and charmed with his manner, and as they rode uptown—she was going uptown toward her home. She was residing in Bronx County. He asked her whether she must go home and she answered that she must. That while she had liberties at home, in that her people or sisters had implicit confidence in her, her mother had died, and that while her mother was alive, while she permitted her to stay out late in the evening and even in the early hours of the morning, she always wanted to be certain that she would be home, and that her mother had confidence that she could take care of herself and that her sisters had pursued the same manner and sort of discipline toward her. That this man volunteered to see her home, and did so, and before they got home he had requested her to spend the evening with him. That she had had an engagement with a physician for that evening, but she had become so completely charmed with this man's manner and so impressed with it, that she had made up her mind to break the engagement with the physician and to spend the evening in the company with this gentleman. That when they got to her home, he remained downstairs and she went upstairs. That her sister helped her to dress and that one of her sisters telephoned to the physician that she would not be able to keep the engagement that night. That when she came down this gentleman was waiting, and he told her how handsome she looked, and they went to a restaurant. She said in the course of the conversation at the restaurant that she became even more impressed with this gentleman, and she did not eat anything. She was constantly listening to what he had to say, and he told her narratives of experiences in the East and West, and then they went to the Strand Theater, where she could hardly describe the performance, because she was so taken up with this man's conversation. After they left the Strand Theater he again asked her whether she must then go home, and she practically reiterated what she had said in the subway station. He then said that he would escort her home. They went there direct from the Strand Theater.

On the way home he said that he had made arrangements to spend the next day at New Haven. This was on a Saturday evening, and he said that he thought it would be a delightful outing for her if she would accompany him the next day to New Haven. She agreed,

and they arranged that he would call at her residence at 10 o'clock the next morning. . She told me that on the way up in the subway he had told her his name and given it as Oliver Osborne. On the next morning at 10 o'clock he appeared, came upstairs, met two of her sisters, to whom she introduced him; that they then left the house, and she had made up here mind that she did not care to go to New Haven, but had not indicated that circumstance to this gentleman.

That instead of going south, as would have been proper if they were to go to New Haven, she took him north, and they rode around for some time, and then they took a southbound train, because he said he wanted to get to the Grand Central Station. That they did not get off at the Grand Central Station, but on the contrary, rode down to the Battery. That they got off at the Battery and walked north, and that this gentleman expressed some surprise at the size of the buildings on lower Broadway. That he asked whether this was the way to the station for New Haven, and she said that she did not know. That he likewise pretended ignorance and they strolled by a police officer, and he stopped and spoke to the police officer, she being under the impression that he asked the way to the station which would carry them to New Haven. That instead of going that way, they walked west on Liberty Street and they crossed the ferry, and they found themselves in the yard or platform or station of the Central Railroad of New Jersey, and while they were standing there, one of these wooden signs or placards indicated that the next train would go to Plainfield. That single one seemed to come up from the others, indicating Plainfield. That this gentleman went to the station master or the person at the gate and asked how long it takes to go to Plainfield. That they had now reached about the noon hour, and he told the station master—the station master told this gentleman how long it would take, and they boarded the train for Plainfield. That they got off at the Plainfield station and walked.

That she had never been there in her life before, but that a short distance from the station he observed a hotel and indicated that it would be a good place for luncheon, after he had first seemingly looked the place over. That they went inside and dined; that he left the table for a while and then came back, she having seen him talk to a gentleman, and he said that that gentleman was the proprietor of the hotel and that they had recognized each other as being brother Elks, not known to each other personally, but by reason of their membership in this order. After they got through dining, she said that this gentleman talked to the proprietor again and then they left the hotel for a short walk. On their way back to the hotel he said to her "When you enter the hotel be sure not to remove your left glove, and if the proprietor, to whom I will introduce you as Mrs. Osborne, will ask you how you like the house, say that you like it very well." She said "I don't understand what you mean," and he said "I told the proprietor we came down here to look for a home; that we were going to settle in Plainfield and he recommended a house to me, and we are supposed to go down to look at the house and to let him know how we like it." They got back to the hotel and she claimed that she was very nervous, and that the first thing that she did was to halfway draw off her glove, and that this Mr. Osborne indicated to her she should not and that

she then stopped. That he had introduced her to the proprietor of the hotel as his wife, and that the proprietor answered, "The room is quite ready, Mr. Osborne." That they went up to the room; that she had stated that she was tired from the riding and walking around and that that was the occasion for engaging the room. When they got into the room, he told her to make herself comfortable and that he would be back after a while.

That he left the room; that she had gotten into bed, and he came back a very few moments afterwards; and that he then told her how much he cared for her; what an impression that she had made upon him, and she had become completely charmed with him. She said that he told her that he had met many women, but that she seemed to be the one woman for his life, and told her that he was going to marry her. At any rate, at the end of the episode, why, she had yielded, and stated that she had yielded quite willingly to his desires. That she did so because she was charmed with the man, and that she could not resist anything that he requested. That they subsequently left the hotel together, Mr. Osborne not going to the desk to make a settlement, stating that the proprietor, by reason of the fact that he had been a brother Elk, told him that that was unnecessary. They came to New York, and from that time on until Christmas their acquaintance continued continuously. That she saw him from time to time; that he took her to various places of amusement; that she wrote to him frequently at the New York Athletic Club. That he wrote to her three letters, which she said—she stopped and said, "Mr. Steuer, this man has now declined to marry me, and refuses to have anything further to do with me. Have I got a case against him?" "Why," I said, "if those facts are true, you undoubtedly have a case against him." She said, "Do you know Mr. James W. Osborne?" I said, "Why, yes; I know him, intimately; have known him for at least 20 years, and have been on the most friendly terms with him for 15." I said, "What has he to do with this matter?" She said, "James W. Osborne is the man who took me to Plainfield." I said, "Had you stated that in the beginning, you could have spared yourself the unpleasantness of the narrative."

She asked me whether I would take a case against James W. Osborne, at that point. I said, "No; I would not," and she said, "Yet you say I have got a good case?" I said, "If these facts are true, you have undoubtedly got a good case, whether the man is James W. Osborne, or any other person; but I could not, by reason of my relations with Mr. Osborne—I know his father-in-law, and I have known the man intimately, and I certainly would not take a case against him of this sort." She said, "That is remarkable. A man can have influence and friends, and then he can take advantage of young girls in this way, and she has got absolutely no remedy or relief." I said, "You are quite mistaken about that; the fact that I do not take your case does not mean that you have got no remedy, and does not mean that you won't get relief. You just happen to have come to a person who, by reason of his acquaintance with Mr. Osborne, would be embarrassed in taking the case." She said, "You are the fourth lawyer that I have been to." She said, "I went to see Judge Olcott, and when I got to their office I was advised to see Mr. McManus. I talked with Mr. McManus; he heard my story from start to finish; he told me that he had been an assistant district

attorney at the same time that Mr. Osborne was, and that he did not know whether the office would want him to take the case, and he went in to see Judge Olcott, and he came back and said that Judge Olcott said that he, having been a district attorney when Mr. Osborne was an assistant, that the office would not care, under those circumstances, to take the case." She said that she had communicated with Mr. Mooney; that Mr. Mooney had made an appointment to call at the place of business at her employers; that he seemed quite impressed, but when it became known that the action was contemplated against Mr. Osborne, that Mr. Mooney's secretary communicated to her that Mr. Mooney would not keep the appointment. She said she had seen another lawyer, who was very much impressed with the case, and was willing to take it, but, for some reason that she did not state, she had come to the conclusion that she did not wish to retain that attorney.

Then she said, "Mr. Steuer, if you know Mr. Osborne so well and do not want to take a case against him couldn't you see Mr. Osborne in my interest, and see whether you can get him to do something under these circumstances? I want to be set right; I want to be set right with my sisters." I said, "I have told you of my relations with this man. Would you, nevertheless, want me to talk to him about it?" She said, "Yes." I said, "It is quite likely that I will see Mr. Osborne in the courthouse; we both get there practically every day. You call me up after court hours to-morrow and I will let you know whether I have seen him or whether I intend to see him." She said to me, "Why, these three letters that I have, Mr. Osborne has sent a detective to me to try to get them away from me, and these detectives said that I had the wrong man; that Mr. James W. Osborne never saw me in his life." I said, "Well, you say that this man expressed surprise at the size of the buildings on lower Broadway?" She said, "Yes"; and that he asked a policeman the way to get to the station for New Haven? She said, "Yes." I said, "On these occasions when you went about with Osborne, did many people seem to recognize him?" She said, "Not very many." I said, "Osborne has tried a great many cases that have attracted a great many people, and it would be very likely, if he went to a public place, that a large number of people would see him and, while he may not know them, it would seem strange that a large number of people would not know him." I said, "Now, you say that these detectives told you that Osborne claims that he is not the man and that he never saw you in his life?" She said, "Yes."

I said, "Well, little girl, it is quite possible that you are talking about the wrong man, and that James W. Osborne is not the man, and by this talk that you make you can do this man more harm in five minutes than he could undo in a lifetime. The first thing for you to do is to absolutely determine that he is the man—make sure that he is the man. Why, he has got an office across the street, at 115 Broadway. If this man took you to Plainfield and had these relations that you have told me about, why don't you walk right into his office; you can determine in a second whether he is the man and see whether he will say to you that he never saw you in his life?" She said, "I know that he is the man." I said, "How do you know that he is the man?" She said, "In the first place, he told me that he had to go to Providence for a few days on business, and he would not see

me during those few days; would be unable to see me." She said, "I subsequently saw a photograph of James W. Osborne, with an article that he had gone to Providence; but," she said, "Mr. Steuer, the man told me that his name was 'Oliver Osborne,' but to address him at the Athletic Club as 'James W. Osborne.' I wrote to the Athletic Club, and the appointments that I made in those letters that were addressed to 'James W. Osborne' were all kept by 'Oliver Osborne,' and one of these letters he returned to me." I said, "I still would advise you to go over there and just walk into his room and talk to him there." She said that she was going. She left my office, I should say it was around 6 o'clock.

While we were at dinner that evening there came a call to the house, and Mrs. Steuer's sister answered the phone, and she said that Miss Tanzer was on the wire. I went to the phone, and she said, "I won't keep you a moment, Mr. Steuer; I just want to tell you that I went to Mr. Osborne's office; that just as I got to his office he came out with two other gentlemen. He is undoubtedly the man; absolutely the man." I said, "Did he recognize you?" She said, "He did not see me." I said, "Well, you call me up to-morrow, as I directed, and I will then let you know whether I can do anything for you." I had an appointment with Mr. Bonyng—he is a member of Mr. McManus's firm, of Judge Olcott's firm—the next day, and, in consequence of a conversation I had with him, I determined not to see Mr. Osborne, and when Miss Tanzer called me up that afternoon, I said that I had decided that I could do nothing for her and that I would not see Mr. Osborne. I have had no other conversation or communication of any sort with Miss Tanzer at any time. I have not seen her except on that one occasion.

Mr. WALSH. Mr. Steuer, did you subsequently call Mr. Marshall's attention to the story that you have just related to the committee?

Mr. STEUER. No, sir; Mr. Marshall communicated with me. I never called anybody's attention to it.

Mr. WALSH. In consequence of the communication you received from him, did you go and have a talk with him, or did he come and talk with you?

Mr. STEUER. I called at Mr. Marshall's office, at his request.

Mr. WALSH. Can you tell about when that was?

Mr. STEUER. I think it was in March, but I could not undertake to say positively; I should judge that two or three weeks had probably intervened, and perhaps longer. I do not want to say that I can fix it even positively as being March; it is my best belief that it was in the latter part of March.

Mr. GARD. Of what year?

Mr. STEUER. Of 1915.

Mr. WALSH. You became aware after Miss Tanzer called on you of her bringing an action against Mr. James W. Osborne, did you not?

Mr. STEUER. Through the newspapers.

Mr. CARLIN. I just want to ask you this question with reference to your narrative: You first stated that Miss Tanzer told you that she had been sent to you by her employer?

Mr. STEUER. Yes.

Mr. CARLIN. And that you could verify it by calling him up?

Mr. STEUER. Yes.

Mr. CARLIN. You afterwards stated that she told you that she had been to see three or four others before she came to you?

Mr. STEUER. Yes; and I want to tell the committee something I had forgotten, which has just occurred to me, in connection with that.

Mr. CARLIN. Did it occur to you then that perhaps she had not been sent to you by her employer?

Mr. STEUER. No; it did not; and I will tell you why. When Miss Tanzer spoke of having letters from Mr. Osborne I said, "Let me see the letters." She had a little hand bag with her, and she opened it and took out of it four sheets of paper, and on the top sheet there was just a list of names; and the first name on it was that of a Mr. Hyman, and then came Judge Olcott's firm, but not with Mr. McManus's name; and after Judge Olcott's firm's name came Mr. McManus's name, and after Mr. McManus's name came Mr. Mooney's name, and after Mr. Mooney's name came my name, and after that name another name that I do not recall, and then came the name of Slade & Slade; and she said that her employer had given her the names of all of us, and asked us first to see this Mr. Hyman. I looked at the letters, and after having looked at them, I said, "These do not look to me as if they were written by a college-bred man or a cultivated man," and she said, "They are copies; my employer has the originals in his safe."

Mr. WALSH. Mr. Steuer, would you recollect the name of that employer, if it were called to your attention?

Mr. STEUER. If you called my attention to it, I think I could. The senior member of the firm was the one she said had mentioned my name to her, and I think his name began with an "F," but I can not be certain.

Mr. WALSH. Was it Farrington?

Mr. STEUER. Yes; I know it was.

Mr. WALSH. Will you relate to the committee what talk you have had with Mr. Marshall about this story that Rae Tanzer told you?

Mr. STEUER. Mr. Marshall said that it had come to his knowledge that Miss Tanzer had been to see me, and I said that was true. He asked me whether I felt at liberty to narrate to him what Miss Tanzer had said, and I said "No," that I did not. He asked me whether I thought that I was precluded by the provisions of the code, and I said that I thought I was. I think that is about all that transpired at that time.

Mr. WALSH. Did you subsequently have another talk with Mr. Marshall about it?

Mr. STEUER. I am not very clear whether the next conversation was with Mr. Marshall himself; I know it was over the telephone, and I believe that it was with Mr. Marshall, but I won't be positive. It was either with Mr. Marshall, Mr. Wood, or Mr. Hershenstein. My impression is it was with Mr. Marshall, and the person talking then stated that Miss Tanzer had, in writing, requested that I should narrate to Mr. Marshall what Miss Tanzer had communicated to me. I said that if Miss Tanzer would direct a communication to me, or give Mr. Marshall's office a communication authorizing me to tell Mr. Marshall what Miss Tanzer had said to me, that I would have not the slightest objection to repeating it, and Mr. Marshall said, or the person speaking said, that I would be sent a copy of the com-

munication, and that he would assure me that they had the original then in their possession; and the next day in the mail I received a copy of a paper. My recollection is that it incorporated a direction, not only to me but to Mr. Hyman and Mr. McManus and to Mr. Monney, to communicate to Mr. Marshall's office whatever Miss Tanzer communicated to us.

Mr. WALSH. In consequence of that, did you communicate to Mr. Marshall the story that Miss Tanzer had told you?

Mr. STEUER. I saw Mr. Marshall, and I think, in substance—but not with the same fullness, perhaps, as I have stated it here—I stated what had transpired. Mr. Marshall asked me whether I had any objection to putting it in writing. I said “Not the least,” and I would be glad to send it to him. I did not know that there was any hurry about it, but one day Mr. Wood called me up, I think, three or four times. I did not get back until a little after 5—our courts keep open until 5 now—and Mr. Wood said it was very important to the interests of the Government that the paper should reach the district attorney's office that night, and he asked me whether I would not get it out that night. I said “Well, I will dictate it just as fast as I can,” and he called up after 6. I told him that I had dictated it, but that it would take some time to transcribe it. He asked whether I would not see to it that it was sent to his residence that evening. I said if it was that important, I would, and that was done.

Mr. WALSH. Now, in reference to the time, Mr. Steuer, could you tell us the time in reference to the bringing of the suit by Miss Tanzer against James W. Osborne?

Mr. STEUER. Why, this was after the suit was brought; this was after the institution of the proceedings in the United States court against Miss Tanzer. Miss Tanzer did not sign any paper authorizing me to talk until I had read in the newspapers that she had personally made a statement to the district attorney's office.

Mr. WALSH. Then, it was after her bringing a civil suit, and it was also after the criminal proceeding against her; is that right?

Mr. STEUER. It was after the hearing before Mr. Houghton—Commissioner Houghton—is my impression. It was certainly after she had made her statement to the district attorney—at least, after I read that she had made her statement to the district attorney.

Mr. WALSH. I think that is all, Mr. Chairman.

Mr. CARLIN. What do you suppose was Miss Tanzer's idea in releasing you from the professional obligation to retain her communication, or regard as sacred her communication, so that you might tell it to the district attorney?

Mr. STEUER. Whether that was her idea?

Mr. CARLIN. I asked you what did you think was her idea?

Mr. STEUER. I can not conceive of what other idea she could have had, because the communication was addressed to Mr. Marshall.

Mr. CARLIN. I say, what was her purpose in wanting you to advise the district attorney with reference to this matter, when the district attorney was investigating her with a view to indicting her?

Mr. STEUER. Well, you can—I was impressed very much, as you seem to be, with the novelty of that situation; but I really had the idea that Miss Tanzer at that time was in pretty safe hands, so far as she herself was concerned; I did not assume that any person was furnishing evidence or communication of any sort, either directly

or indirectly, unless that person had some assurance. You must understand that I do not know that she had any assurance. I had no communication with her or with anyone else on the subject; but thinking about it, I could not reach any other conclusion except that this woman, being then advised by counsel, would not want communications made known—made public—handed over to the prosecuting power, unless she felt that it would be to her advantage, and I was very anxious to help Miss Tanzer. I had a great sympathy for Miss Tanzer; and that story, as she told it, sounded very much better than when I tell it, a year or more after I heard it. At the time she told it it impressed one that Miss Tanzer had been pretty badly used.

Mr. CARLIN. But what I am getting at is your idea as a lawyer, and being familiar with all the parties; what was in your mind at the time that your client, or one party who had asked you to represent her—Miss Tanzer—should release you from secrecy, so that you might tell her case to the officer who was investigating her with a view to indicting her?

Mr. STEUER. Well, I did not understand at that moment that she was being investigated with a view to indictment.

Mr. CARLIN. What did you understand the district attorney was doing?

Mr. STEUER. At that time?

Mr. CARLIN. At the time you made your communication to him.

Mr. STEUER. My belief was, based upon nothing except what I had read in the newspapers and the picture that would be drawn to my mind as a practicing attorney, that if a lawyer takes a person who had just been held in large bail by one of the commissioners on a preliminary hearing to the prosecuting authorities, that lawyer must have had a pretty clear understanding that his client was not going to suffer by the disclosure made.

Mr. CARLIN. At least, the client must have had that in view; do you not think so?

Mr. STEUER. If the client did not have that in view, and if the lawyer permitted her to talk and to direct others to talk—I am not here to criticize lawyers, but I do not think that all the authorities in the world could get me to permit a client to talk or to permit anybody else to talk under such circumstances, unless I knew positively that in no way could my client subsequently be made to suffer.

Mr. CARLIN. Then, you must have been surprised when Miss Tanzer was indicted?

Mr. STEUER. I rather think it was more than a surprise. I do not know anything about those things, but it is quite possible in charges of conspiracy, for instance, people are indicted when the indictment would show that they are indicted, when I really do not think that there is the slightest intention of their ever being real defendants when the matter comes to trial. I think the theory is that some testimony becomes competent that otherwise might not be. That is particularly so—

Mr. CARLIN (interposing). Then, it is your idea that Miss Tanzer's indictment will never come to trial; is that the idea you have?

Mr. STEUER. I have no idea on that subject now, but my impression was that when an indictment was going to be found upon a

woman's own narrative, when she authorizes lawyers to whom she spoke under the sacred pledge that is implied in the profession and under the inhibition they are under by law not to talk, and when she, voluntarily, and when her attorney goes to the prosecuting officer to testify, the only impression I can gather, and the only inference I can draw, is that she knows what she is doing, and that her lawyer knows what he is doing.

Mr. CARLIN. All the surface indications, so far as you have been able to observe them, were that there were no hostile proceedings anticipated toward Miss Tanzer?

Mr. STEUER. At that time?

Mr. CARLIN. At that time.

Mr. STEUER. Yes.

Mr. CARLIN. In other words, you gathered the impression that she was in friendly hands in the district attorney's office?

Mr. STEUER. Understand, I am just giving my impressions derived from the newspapers, Mr. Chairman, the same as you would be impressed.

Mr. CARLIN. I understand.

Mr. STEUER. Whether they are well-founded or not, I do not know.

Mr. CARLIN. I know; but as one of the parties to the proceeding, in a way—that is to say, you were invited to talk the matter over with the district attorney?

Mr. STEUER. Yes; I was invited to talk it over with him.

Mr. CARLIN. And you did it, and you must have gathered some impressions from that conversation?

Mr. STEUER. The impression I gathered, Mr. Chairman, was that I was rendering a service to Miss Tanzer.

Mr. CARLIN. And that she was in friendly hands?

Mr. STEUER. Absolutely; she had asked me to tell, and I told.

Mr. CARLIN. You did not ask the district attorney what his purpose was, did you?

Mr. STEUER. Oh, no.

Mr. CARLIN. Did you think he was going to indict Mr. Osborne?

Mr. STEUER. Did I think he was? No; I never thought he was going to indict Mr. Osborne, but I did think, and, if my recollection does not fail me, I think he said that he was going to find out the real facts, and that he was going to go to the bottom of the matter and make a complete and thorough investigation of it, and I believe that on one occasion he did say that he was convinced that Miss Tanzer had made a mistake.

Mr. CARLIN. Did you agree with him about that?

Mr. STEUER. As to whether she had made a mistake or not?

Mr. CARLIN. Yes.

Mr. STEUER. I had known Mr. Osborne for 20 years. What I knew of Mr. Osborne's life was filled with industry, and the whole picture, as it presented itself to me, would have been inconsistent with James W. Osborne being the individual who participated in those acts. On the contrary, I have heard in the twenty-odd years that I have been practicing a great many stories by a great many clever witnesses. I did not believe that that girl could tell me that story without my seeing somewhere the weak link. I was then persuaded, I am now persuaded that the incidents that were described by that

girl took place; there was but one question, and that question was: Who was the man? But as to the incidents occurring, I did not have a doubt when I listened to her; I have never had a doubt since, and I have no doubt now.

Mr. CARLIN. I do not think you exactly understood my question. Will you repeat my question to the witness, Mr. Stenographer?

(Thereupon, the reporter read aloud from his minutes, as follows:)

Mr. CARLIN. Did you agree with him about that?

Mr. STEUER. As to whether she had made a mistake or not?

Mr. CARLIN. Yes.

Mr. STEUER. I think I have answered that in the only way that I can, Mr. Chairman.

Mr. NELSON. What day was it Mr. Wood called you up over the phone and asked you to hurry your statement?

Mr. STEUER. If the statement has a date, Senator, that would fix it absolutely, and if the statement has not a date, I do not believe that the notes in our office are as yet destroyed, and that date could be definitely furnished.

Mr. NELSON. What I am after is: What reasons did he give for the haste?

Mr. STEUER. He said that it was necessary for the Government's purposes, but I did not go into it—I did not ask anything beyond that.

Mr. NELSON. How quickly afterwards was the indictment handed down against Miss Tanzer?

Mr. STEUER. I really do not know, Senator. I know that some time later, between a week or two after that, I should judge, I was subpoenaed to come before the grand jury.

Mr. NELSON. Did you understand that that was the basis of an indictment against her?

Mr. STEUER. The statement that I made?

Mr. NELSON. Yes.

Mr. STEUER. Why certainly not. I do not see anything in any statement that I made—or could have made—that would have been used as the basis of an indictment against Miss Tanzer.

Mr. NELSON. Have you any knowledge since as to why your statement was desired with such speed?

Mr. STEUER. Absolutely none; never spoke to a soul about it since that time, nor did anyone speak to me about it.

Mr. GARD. I am particularly interested in what you have told here. How long ago was James W. Osborne connected with the office of the United States district attorney?

Mr. STEUER. So far as I know—there are two James W. Osbornes. The one that I am speaking of, so far as I know, was never connected with it.

Mr. GARD. He was not?

Mr. STEUER. No.

Mr. GARD. Had he ever had any connection with it by special assignment or for the trial of special cases?

Mr. STEUER. I think he did have an assignment in some special prosecutions; but so far as being a regular attaché of the office he has never been connected with it—that I know of—in the 20 or 22 years that I have been practicing.

Mr. GARD. Had he any connection with the prosecuting force in New York County?

Mr. STEUER. Oh, yes; he had been there for years—for years. Mr. Osborne, so far as I recall, was an assistant under Mr. De Lancey Nicoll, when he was the district attorney; he was there under Mr. Olcott, when he was the district attorney; he was there up to the time that Mr. Jerome took office; and, I think, for a very brief period under Mr. Jerome.

Mr. GARD. He held under two terms of county prosecutors?

Mr. STEUER. More than two, I think.

Mr. GARD. And partly under an additional one?

Mr. STEUER. Yes.

Mr. GARD. For our information, tell us what is the elective term of the county prosecutor.

Mr. STEUER. Four years now.

Mr. GARD. Was it then?

Mr. STEUER. No; it was not. I think it was only two years; but I think that he was connected with one of the four-year terms.

Mr. GARD. He was connected, then, with the county prosecutor's office for four or five years at least?

Mr. STEUER. Oh, longer than that, because I remember Mr. Osborne as a deputy assistant and then as a full assistant, and it took him quite some time to go through those steps. He was one of the very prominent prosecutors of this county; very widely known.

Mr. GARD. Very prominent as a trial lawyer likewise?

Mr. STEUER. Yes.

Mr. GARD. And, as you have said, was quite widely known?

Mr. STEUER. I should imagine he would be very widely known: certainly widely known to the members of the bar.

Mr. GARD. You said in your first statement or conversation with this Miss Tanzer that you had known this James W. Osborne for a long time, and because of that knowledge and from other circumstances of relationship, either personal or business, you were not in position to take the case?

Mr. STEUER. That is right, sir.

Mr. GARD. That is practically what you meant to say?

Mr. STEUER. Yes, sir.

Mr. GARD. You spoke also of acquaintance with his father-in-law. Who is the father-in-law of James W. Osborne?

Mr. STEUER. Judge Van Wyck.

Mr. GARD. Beg pardon?

Mr. STEUER. Judge Van Wyck.

Mr. GARD. Do you recall the time when Miss Tanzer first came to see you?

Mr. STEUER. As to the month you mean?

Mr. GARD. Month and year?

Mr. STEUER. Very distinctly.

Mr. GARD. Tell us about when that was.

Mr. STEUER. It was in the early part of March.

Mr. GARD. The early part of March in what year?

Mr. STEUER. 1915.

Mr. GARD. You have recited your story or your statement of what occurred, and I will not ask you to go over that again in detail.

since it would only encumber the record. When she left did you suggest that she go to any other attorney?

Mr. STEUER. No, sir.

Mr. GARD. Your advice to her—your final advice—was, as I understand, that you told her to go to the office of Mr. James W. Osborne, to see if he was the man, because in your mind that was the controlling question?

Mr. STEUER. The only question.

Mr. GARD. You were satisfied from your investigation of the probable truth of her statements except as to the matter of identity?

Mr. STEUER. I had made no investigation, but the manner of her narrative had left the impression with me that there was no doubt about it.

Mr. GARD. Except as to identity?

Mr. STEUER. Yes, sir.

Mr. GARD. And you, very properly, wished her to be certain of the identity, and therefore you asked her to go to Mr. James W. Osborne's office?

Mr. STEUER. The thing that was uppermost in my mind was the harm that she could do to James W. Osborne and the terrible injustice that would result from statements of the kind that she had made to me—injustice to him.

Mr. GARD. Or injustice to any man who might be the victim of a case of mistaken identity?

Mr. STEUER. That is the point exactly.

Mr. GARD. And therefore you very properly, I think, asked her to go to Mr. Osborne's office?

Mr. STEUER. Yes, sir.

Mr. GARD. She afterwards communicated with you and said she had gone there?

Mr. STEUER. That same evening.

Mr. GARD. And had seen the man whom she called Oliver Osborne and identified him as James W. Osborne?

Mr. STEUER. Yes, sir.

Mr. GARD. Coming from James W. Osborne's office?

Mr. STEUER. Yes, sir; with two other men.

Mr. GARD. I suspect, as a matter of fact, since we are somewhat familiar with this, when there was a trial in court and some matter of identity was up on this same question, there was a statement made by James W. Osborne about some call at his office and his house by a "Oliver Osborne," was there not?

Mr. STEUER. I read of a call, but my recollection of the reading was that James W. was not in his office when "Oliver" called. My recollection was that one of his partners, Mr. Gilbert Lamb, was in the office when "Oliver Osborne" called and made his identity known, and then some other member of the firm took "Oliver Osborne" up to the hotel where James W. was living. That was in the newspaper.

Mr. GARD. I understand that. We have some information about that, I am frank to say to you. But, at any rate, there was testimony offered for what it may have been worth that a man giving the name of "Oliver Osborne" did call at this office, and was, in turn, taken up to his residence—wherever that may have been—I mean the residence of James W. Osborne?

Mr. STEUER. My recollection is he was taken to the Sherman Square Hotel.

Mr. GARD. That incident, or the incident of the call of this "Oliver"—"Cousin Oliver"—was an incident in the trial, I believe?

Mr. STEUER. I did not know—

Mr. GARD (interposing). Or brought out at the trial in the evidence?

Mr. STEUER. I did not know there was any trial, Senator.

Mr. GARD. At the trial of the Safford case?

Mr. STEUER. Oh, at the Safford trial?

Mr. GARD. That is the one I am referring to when this evidence of "Oliver Osborne" was submitted in court.

Mr. STEUER. So I understood from the newspapers.

Mr. GARD. Now, I want to know this: You said that Mr. H. Snowden Marshall, the present United States district attorney, requested you to come to his office?

Mr. STEUER. Mr. Marshall, as I recall it, asked if it would be convenient for me to drop down to see him, or else he would drop in to see me, and I told him that he need not bother; that I passed by his office quite frequently, and that I would drop in.

Mr. GARD. Now, at that time did he give you any intimation of why he desired to see you?

Mr. STEUER. He did not, but I want to be frank with you, as I think you have been with me.

Mr. GARD. Yes.

Mr. STEUER. No intimation to me was necessary at that time; the newspapers gave me all the intimation that I needed on that score.

Mr. GARD. How far had the matter advanced at that time?

Mr. STEUER. It was the one newspaper topic in New York at that time. It was the front-page item.

Mr. GARD. I mean with relation to any investigation by a Federal district attorney—how far had it advanced?

Mr. STEUER. My recollection is that it had gotten to the stage where Miss Tanzer had been held by Commissioner Houghton.

Mr. GARD. She had been held?

Mr. STEUER. Yes, sir.

Mr. GARD. The action had so far advanced that a preliminary hearing had been held against Miss Tanzer? What was the charge; of using the United States mails with intent to defraud, or something of that kind?

Mr. STEUER. That is what I am told, but I do not know anything about that.

Mr. GARD. This preliminary hearing had been had, and she had been held to answer?

Mr. STEUER. Yes, sir.

Mr. GARD. How soon after Mr. Marshall requested you to come to his office, or that he would see you in your office at your convenience, did you go to see him in this matter?

Mr. STEUER. I should judge, three or four days; I know that it was on a Saturday morning; it was the first time that I had the opportunity to call.

Mr. GARD. Then you did see him in his office?

Mr. STEUER. Yes, sir.

Mr. GARD. And you made the statement that you have made here to-day?

Mr. STEUER. Not with the same fullness, because he preferred that it be put in writing.

Mr. GARD. Well, you advised him probably not in such a full way; but you advised him practically of all that you have told us; at least, all of the controlling incidents and circumstances, you told him, did you not?

Mr. STEUER. I told him of what I regarded the main features of the situation.

Mr. GARD. At that time did you have with you the consent—the written consent of Miss Tanzer to make the statement to the district attorney?

Mr. STEUER. No; I received that in the mail, Senator.

Mr. GARD. When?

Mr. STEUER. Before I would talk to Mr. Marshall. Bear in mind that I told—that I saw Mr. Marshall twice.

Mr. GARD. I understand.

Mr. STEUER. That Mr. Marshall asked me whether I was free to talk, and I said that I did not regard that I was.

Mr. GARD. I understand that, and then you afterward obtained the authority?

Mr. STEUER. Mr. Marshall sent it to me.

Mr. GARD. Mr. Marshall sent it to you?

Mr. STEUER. Yes, sir; Mr. Marshall sent it to me. I certainly would not have seen Mr. Marshall and told him, unless I got that, of course not.

Mr. GARD. Oh, yes. Now I see; I did not understand that.

Mr. STEUER. Well, I so stated, Senator, in my examination.

Mr. GARD. Probably; I did not recall it. Then, the matter proceeded this way; that this, if it might be called a "waiver of confidence," if I may coin a new phrase in legal procedure—this waiver of confidential expressions or conversations at least, was sent to you by Mr. Marshall, the district attorney?

Mr. STEUER. Yes, sir.

Mr. GARD. And did he say that he had obtained that waiver from Miss Tanzer?

Mr. STEUER. Why, I do not know the exact wording, but I am confident that he had it, or I certainly should not have spoken to him or to the grand jury.

Mr. GARD. I mean, did he tell you that he had himself obtained this waiver?

Mr. STEUER. The communication so stated.

Mr. GARD. The letter said that?

Mr. STEUER. Yes, sir.

Mr. GARD. Did the so-called waiver state that?

Mr. STEUER. Yes.

Mr. GARD. Mr. Nelson asks me to interrogate you as to your recollection as to the form of the so-called "waiver" and what the signature thereon was?

Mr. STEUER. Miss Tanzer signed in the office of the district attorney, and Mr. Marshall sent a communication addressed to me, as "Max D. Steuer, sir," indicating that Miss Tanzer had signed a communication to this import. I then came over at the subsequent

occasion to see Mr. Marshall, and then it was that Mr. Marshall showed the communication signed by Miss Tanzer. I thought I had or I tried to make that clear before, Senator.

Mr. GARD. It was suggested that you give a little bit more particularly, if you could, the form and manner of the signature on this waiver.

Mr. STEUER. If there is anything further, Senator Nelson, on that—

Mr. GARD. On this matter in relation to the waiver.

Mr. STEUER. When I was asked to come before the grand jury, Senator, I remember distinctly that I examined the provision of the code, and I said that my understanding was that the consent by Miss Tanzer given to Mr. Marshall for my statement to Mr. Marshall would not be a warrant for my testifying before the grand jury, and then Mr. Hershenstein called me on the telephone, and I repeated to him what I had said upon that subject and Mr. Hershenstein said that that would be attended to; that I certainly would not be required to go before the grand jury and testify unless I was fully protected in that regard; and when I appeared before the grand jury, and after I was sworn, I then repeated and asked the stenographer to note that I did not regard that the authority which I had theretofore received warranted me in talking before the grand jury; and thereupon Mr. Wood reiterated that they had the waiver of Miss Tanzer, as he, Mr. Wood, had read it to me, and that authorized me to state to the grand jury what had transpired between Miss Tanzer and myself, and after that was noted on the minutes, then I stated to the grand jury what had transpired between Miss Tanzer and myself.

Mr. GARD. I understand that everything that you did was in very proper compliance with your high ideals of the confidence in which a lawyer should hold communications of a client or one who has consulted him on a matter in which he might become professional adviser.

Mr. STEUER. Senator, is it your impression that I should have done anything more than I did?

Mr. GARD. No; I say that I think that everything that you have done is very eminently proper.

Mr. STEUER. I thank you very much.

Mr. GARD. And sustained by the highest ideal of legal ethics. That is my personal opinion. Now, tell me how soon after you made this statement to District Attorney Marshall in his office did you go before the grand jury?

Mr. STEUER. I think it was probably two weeks. It may have been a few days less, and it may have been a few days more.

Mr. GARD. And before the grand jury did you make substantially the same statement that you have made here, and that you made to the district attorney as well?

Mr. STEUER. I tried to before the grand jury state it exactly as I stated it here, and I tried here to state it exactly as I told it to the grand jury, and which was, as my recollection serves me, exactly what transpired at my office; but the statement before Mr. Marshall was not as long, nor in as much detail, because he had some other engagements for the people that morning, and so did I, and it was for that reason he said that he preferred that I should reduce it to

writing at my convenience, and send it to him, and then my convenience had not been such that I could reduce it to writing, and then came these messages that I have spoken to you about before.

Mr. GARD. Was Mr. Marshall in the grand jury room at the time when you testified?

Mr. STEUER. He was not.

Mr. GARD. Who conducted your examination as a witness before the grand jury?

Mr. STEUER. Mr. Wood; and I do not think that Mr. Hertenstein put any question to me. He probably only made suggestions to Mr. Wood, but I do not recall of his having asked me any question.

Mr. GARD. Was Mr. Marshall in the room at any time while you were testifying?

Mr. STEUER. At no time while I was there, nor did I ever see Mr. Marshall or speak to him, directly or indirectly, over the phone or otherwise, concerning this matter after the time I was in his office.

Mr. GARD. During the time when you testified was there any comparison in the presence of the jury between your spoken testimony and your testimony reduced to writing at the request of Mr. Marshall, or your statement reduced to writing?

Mr. STEUER. I think on one occasion that Mr. Wood called my attention, in the form of what I would call a leading question, as to whether a certain thing did not transpire, which was in my statement, and which I had omitted to say, and then I stated my recollection on that subject. There was no reference to the fact that Mr. Wood had a written statement or anything of that sort.

Mr. GARD. Do you recall how soon after you testified in the case that Miss Tanzer was indicted?

Mr. STEUER. I judge about four or five days, or a week, or something like that.

Mr. GARD. I am only asking you this for information; I do not know whether you have it or not. Miss Tanzer brought suit against James W. Osborne, did she not?

Mr. STEUER. Yes, sir.

Mr. GARD. How soon after that suit was brought was this indictment returned against her?

Mr. STEUER. Why, I should judge that was probably six or seven weeks; that is just my offhand recollection—at least that.

Mr. GARD. The suit that she brought—the case that she brought against him—was brought in the courts of New York County?

Mr. STEUER. Yes, sir.

Mr. GARD. This indictment was based on a letter, I believe, was it not, that she was said to have written?

Mr. STEUER. The indictment? I do not know what the indictment was on, but the information lodged before Commissioner Houghton, the original charge against Miss Tanzer, was based upon a letter she wrote.

Mr. GARD. Based upon a letter that she had written to James W. Osborne?

Mr. STEUER. That was my understanding.

Mr. GARD. Your understanding is that that at least is the basis of the charge that was submitted to Commissioner Houghton?

Mr. STEUER. Yes, sir.

Mr. GARD. Commissioner Houghton, I suspect, too, is a resident of New York, is he not?

Mr. STEUER. Commissioner Houghton probably is, because he was an officeholder before he was commissioner, and I think that he would have had to have been at that time a resident.

Mr. GARD. What position did he have before that, may I ask?

Mr. STEUER. My recollection is that he was an assistant prosecutor.

Mr. GARD. Assistant prosecutor?

Mr. STEUER. Yes, sir.

Mr. GARD. In what?

Mr. STEUER. In this district.

Mr. GARD. In the Federal court?

Mr. STEUER. Yes, sir; that is my recollection.

Mr. GARD. Had Mr. Houghton any position at any time in association with Mr. James W. Osborne in that prosecuting office?

Mr. STEUER. Oh, no; Mr. Osborne was never connected with that prosecuting office, so far as I know; I am quite confident he was not.

Mr. CARLIN. Where does Commissioner Houghton live; at Red Bank, N. J.?

Mr. STEUER. I do not know; I know that he held office here at one time. The probability is that he does live at Red Bank; I do not know anything about that.

Mr. GARD. My question, Mr. Steuer, was if you had any information that Mr. Houghton had been associated at the same time Mr. Osborne was in the office of the prosecutor or district attorney of the county of New York?

Mr. STEUER. Why, that is quite likely, but may I say that those two offices are about as separate and distinct as could be possible for two law offices.

Mr. GARD. I may appreciate that, but I am asking whether you have information or knowledge of the facts or not?

Mr. STEUER. I do not think there was any association or relationship of any kind between the two men.

Mr. GARD. Then, you have said something else that appeals to me very strongly, since it is something that the committee desires, and very properly and very necessarily desires, to find out. You have said in your answer to the question of Mr. Carlin, our chairman, that you were surprised when you learned of the indictment against this Miss Tanzer, have you not?

Mr. STEUER. Yes.

Mr. GARD. And you have gone so far even as to say that your feelings might be characterized by even a stronger word than "surprised"?

Mr. STEUER. Senator, I did not regard that any lawyer would bring a young woman here to make statements looking to her own indictment, with a view that she was to contest that indictment and to be punished thereon.

Mr. GARD. I understand that.

Mr. STEUER. Now, does that portray my thought?

Mr. GARD. Yes; I understand your position to be that with your knowledge—your professional knowledge, which, I understand, is great and accurate—you could not conceive of a lawyer placing his client in a position where she afterwards might be subject to a prosecution, and possibly imprisonment?

Mr. STEUER. Might I further say this? Of course, if a client came to me and said that she was guilty of a crime and that she wanted to get the mercy of the court, and to state to the prosecutor what the exact facts are, of course, I would feel it my duty to take that client to the prosecutor and say, "Now, this lady, or gentleman, as the case might be, wants to tell you the absolute truth, and, under the circumstances, as the Government is to be saved the expense and the time and the doubt as to whether there will be a conviction or not, that she ought to be as mercifully dealt with as possible under the circumstances," and I would expect, then, that the prosecutor would, in good faith, lend every effort that he could toward seeing to it that my client might be mercifully treated; I mean, every honorable effort; I would not expect him to make any bargain, and I know that he would not make any bargain with relation to it; but I can not conceive that unless the prosecutor said, "I will take your client's statement, and then, in so far as it is consistent with my duty to the Government, I will do everything I can to get your client merciful treatment"—unless something of that sort transpired I can not conceive of a lawyer just rushing his client, who had made a contest a few days' before, into the office of the district attorney in order that she might become a victim. Now, that situation does not seem plausible to me.

Mr. GARD. I think I understand it thoroughly now. The thing to which I desired particularly to call your attention, after all, is the fact that Miss Tanzer was indicted for conspiracy, was she not, and there was an indictment against her for conspiracy?

Mr. STEUER. Well, I really do not know; I assume that that was the form of the indictment, because she was named with others, and I can not conceive of how anybody else could be named with her, unless the indictment was for conspiracy.

Mr. GARD. You have said that it was the practice in the district attorney's office to indict people for conspiracy, without any intention of bringing them to trial, but merely to enlarge the scope upon which the testimony could be offered?

Mr. STEUER. Oh, no, Senator; I did not say that it was the practice. I did say that it had been done, and I think that very frequently evidence is gotten in under that form of indictment that could not be gotten in under any other form; but I do not want to be understood as saying that Mr. Marshall has pursued any such practice or that Mr. Marshall inaugurated any such practice. On the contrary, I feel that Mr. Marshall is a man of very high ideals and a man who believes in a square deal; but there does seem to be a desire on the part of the prosecuting officer—I do not know what you would ascribe it to—but in talking to a jury I once said it was atmosphere, and for a long time I think the trial lawyers in this county smarted under whatever the atmosphere was; it was there and they felt it, and whenever an opportunity arose—and I am not referring to the Federal prosecutor alone—why, the indictment took a form which made evidence perfectly proper and admissible, which, if an individual alone had been before the bar of justice, would have been utterly incompetent and irrelevant.

Mr. Jones can have a talk in Wisconsin that will be admissible against Mr. Ryan in New York, if Jones and Ryan and everybody else are made defendants. You might liken it unto a case where a

man sues the owner of a horse and wagon and the driver, for instance, knowing full well that no conversation with the driver after the accident would be admissible against the owner; but join the two, and then the driver has a conversation in which he says something about his employer hours after the accident occurs, and the court says, "Well, I exclude it against the owner, but I admit it against the driver," and of course the jury is there to divide up what goes in against the driver and what goes in against the owner. Now, that kind of division, when the court says, upon the trial of a criminal case, "I will take this against the defendant Jones, but I exclude it against the defendant Smith"—whenever that happens I would not like to be the defendant Smith.

Mr. GARD. Now, in what we are discussing I think you understand my attitude and I thoroughly understand yours.

Mr. STEUER. I do, Senator, understand yours.

Mr. GARD. Pardon me; I do not belong to that body. We are humble representatives of the great body of the people.

Mr. STEUER. Pardon me.

Mr. NELSON. Before you pass that, you are speaking now of the practices of the added conspiracy charge to all particular offenses, are you not?

Mr. STEUER. Yes, sir.

Mr. GARD. What I am further elaborating in my own thoughts, with your excellent assistance, if I can obtain it, is not in any sense personal to Mr. Marshall.

Mr. STEUER. I would like to have it so understood, because I clearly regard him as a man of eminent fitness.

Mr. GARD. Rather as a matter of practice.

Mr. STEUER. Yes, sir.

Mr. GARD. In these charges of conspiracy, as you have said, it is possible when an indictment is returned for conspiracy to include any testimony that will at least go to a jury as affecting one man, because of an alleged conspiracy, testimony which absolutely could not be offered if it were confined to a single individual and a substantive act.

Mr. STEUER. That is the point. Would you mind if I added an illustration to the record of what is in my mind?

Mr. GARD. Be very glad to have it.

Mr. STEUER. If a man is charged with using the mails to defraud, and a particular letter is made the basis of a charge, we will assume that in connection with his business he has got 40 salesmen. You name each one of those 40 salesmen in the indictment, and instead of indicting the man for the crime that you believe him guilty of you charge him with a conspiracy, a lower degree of crime, carrying that lesser punishment, but nevertheless overlook the fact that he has committed the crime, and you charge him with the conspiracy, and you tag on the other 40 names. Now, you have got the letter in, and that is the basis of the charge. After that letter is in, you get a flood of correspondence with each one of these individuals named in the indictment, that in the nature of things everybody knows never reached the knowledge of the defendants, and yet the whole scheme is given a color; an atmosphere is created; the setting before the jury is such that the jury thinks it is part of that great body that you have just spoken of. It is part of the people, and it is there for the protection

of the people, and the defendant is destroyed, not because of anything that he has done, and he is not given a trial upon anything that he has done, but because a system is in vogue by reason of which the salesman who wants to sell, and what salesman does not misrepresent—I do not mean criminally misrepresent, but I mean when a man wants to get rid of an article, he certainly does not color it below the standard; he colors it above the standard. A sale is then perfected, and all of that goes in against the defendant, who has not any more knowledge that the salesman spoke to this man or what he said—in fact, never heard of the customer.

The customer, on cross-examination, says, “No, I never met this man; I never spoke to that man.” He did not even hear the conversation; but what has that got to do with it? The jury has already laughed at the grotesqueness of the representations that have been made, of their impossibility, impracticability; and the defendant is assumed, long before the time of the trial arises, because when he goes on the stand, what is he to meet? Can he say that Smith done so and so and say to Jones he wasn’t there? How can he deny it? And, furthermore, the salesman defendant has got no money. He does not get distinguished counsel. The defendant oftentimes has got no money to represent these 40 different men. The easiest way is the best, and he tells what may or may not be the truth, but the real culprit, he not only can not defend himself against the conversations that took place miles away from home, but the men who did, they very frequently recollect that they occurred when sometimes they did and sometimes they did not. That, at least, is the impression that I have gathered from my experience.

Mr. GARD. Might not under this form of conspiracy indictment a man be charged with a crime, merely for the purpose of extending the scope of the inquiry by evidence authorized to be received under a conspiracy charge when there is absolutely no intention of their bringing him to trial?

Mr. STEUER. I do not know what the intention is, but if you judge the intention by the results, then go to the records and take out all of these conspiracy indictments and see whether you will get the same impression that I have got—that very often when men are indicted, one is tried, or two, or that three or four are, just at the time of the trial, omitted from the prosecution, and that they become State’s witnesses.

Mr. GARD. That is another thing that I think the committee is interested in. Can you tell us from your information as a practitioner that this is the result of these so-called conspiracy charges, that often, as you said, 10 are named and 1 is tried?

Mr. STEUER. I think that that would occur with greater frequency than is good for the proper administration of justice, but I want to add to that that I do not believe any incumbent of an office is responsible for that system. It has grown up, and it is here; and I think, if anything, it is rather being curtailed and eradicated and made more applicable to cases than was heretofore; but I think the system itself is one that does not result in a proper administration of justice.

Mr. GARD. Let me ask you this: If the system in itself is one which does not make toward the final fulfillment of justice between

man and man, does not that in itself confer an enormous power upon the incumbent, the executive, or the administrative office?

Mr. STEUER. If by that you mean to ask me whether it gives him power to hurt people, I say, yes. If you mean to ask me whether I think that the incumbent would use such power knowingly and advisedly, I would say of the incumbent himself, no; but there again you must understand that it is impossible for the district attorney of New York County to know what goes on in any case; and I think it is equally impossible for the district attorney in the southern district of New York to know what goes on in any case. I think that for any man to assume Mr. Marshall would do anything wrong or improper, is to make an assumption that is incapable of being based on facts; but can Mr. Marshall know any more than any member of a very large law firm in New York City everything that is going on in his office? If every man were to be held responsible for every little thing that was being done in his office every day, I think we would have no members of the bar for the disciplinary committee.

Mr. GARD. The attitude of the committee is entirely that of an investigating committee, thoroughly impartial and entirely without any feeling, and personally, and I think I can say for the committee, we are very grateful for your elucidation of this practice, which, to my mind, is a very controlling issue in our inquiry.

Mr. STEUER. If it is, and if anything is going to result toward the elimination of the numerous conspiracy indictments, I think that every member of the New York bar will feel that great good has been done by this investigation.

Mr. CARLIN. What would you suggest as a remedy?

Mr. STEUER. I would suggest as a remedy that in any case where the crime has been consummated, the charge of conspiracy should be impossible. To me it seems vicious that you should charge a lesser crime than the crime committed, after the crime has been consummated. I think that conspiracy should be limited to attempt cases, and that wherever, even in an attempt case, the man has consummated his attempt and failed in the perpetration of the crime, and you can charge the man individually, that it should be the duty of the prosecuting officer to present the charge individually, and that in every case where the conspiracy charge can be avoided, that it should be avoided. Real conspiracies are not so frequent. It is those that are created by bringing in subordinates who, in fact, are not responsible; who only carry out the instructions of the main persons. Now, why should he not be charged alone and brought to trial alone? I also would protest against the fear and jeopardy in which the underling is placed by being made a party to the indictment.

Mr. CARLIN. Would you have the right of severance?

Mr. STEUER. Oh, no; not at all; if you had the right of severance—

Mr. GARD. Conspiracy itself is opposed to severance.

Mr. STEUER. Even in the Federal courts.

Mr. CARLIN. Would not the remedy be severance?

Mr. STEUER. I do not think so, because in the State court we have that remedy and yet it does not do anything, and I will tell you why I think it is no good. There are several rules of evidence that

are peculiarly applicable to conspiracy charges, that have no application to any other kind of a case. In the first place, there is the rule that everybody who comes into the scheme, before the scheme is finally consummated, no matter at what stage or at what time, can be made a party defendant and is as guilty of the crime as if he had been party to it from the inception. Now, that leads to these numerous conversations and the great possibilities that I have heretofore spoken of.

Mr. CARLIN. But it does away with the confusion that the rule has as to the effect of the testimony on various defendants.

Mr. STEUER. But, Mr. Chairman, the thing that I protest against is that there is such a mass of testimony that gets in against one man that only affects him, that a jury after a 6, 8, or 10 weeks' trial is incapable of separating what went in against one man and against another. Then, there is another difficulty. In these conspiracy charges, unless a man has got a great fortune at his command, appeal is practically denied him, because the number of the exhibits is enormous and the record itself involves such a tremendous expense, that if the sentence is only made sufficiently small, often an innocent man prefers to serve it to making the expenditure, and it not mere preference. He simply can not if he has not got the means.

Mr. NELSON. What you say is as true in presenting a case to the grand jury as before a petit jury, is it not?

Mr. STEUER. No; I think not, because in presenting to the grand jury the defendant is not put to any expense.

Mr. NELSON. I do not mean the expense.

Mr. STEUER. Oh, the confusion? Absolutely.

Mr. NELSON. That is to say, the mass of testimony presented would lead an inexperienced jury to believe that because they had been indicted together as conspirators, they all knew and participated in the facts?

Mr. STEUER. I think there is a great deal in that. At any rate there is a great danger to a defendant when he is charged with conspiracy that does not exist when he is individually charged. I think the experience of a trial lawyer must be, although I do not speak for anyone but myself, that his task in a conspiracy case is practically hopeless, and if you take the pains, before you make your final recommendation, to have sent to you the records in some of the conspiracy cases that have been tried—it is hard to impose a task of that sort upon you, because those records are so big and so long and they have these numberless exhibits in them that have nothing to do with the case—you would be amazed if you made a close analysis to find that in support of the charge in the indictment there may be as many as three pages of testimony and yet you are wading through a record of 3,000 pages.

Mr. CARLIN. I understood you to say, when you came on the stand, that you had a court and jury waiting for you?

Mr. STEUER. I did say that.

Mr. CARLIN. I would be glad if you would say to the court that we appreciate its kindness in letting you come.

Mr. GARD. In line with your last suggestion, could you give to us so it may be incorporated in our record, the name of any of these so-called conspiracy cases that we might examine?

Mr. STEUER. I would be very glad to send them to you.

Mr. GARD. We will be very glad to have you do that.

Mr. STEUER. I would be delighted to do it.

Mr. GARD. Also another matter that was probably best brought out by Mr. Nelson when he spoke about the presentation of the matter under a conspiracy charge to a grand jury, and the confusion of mind that might result, wherein the jury might be guided by the handing in of a number of names by the prosecuting officer who had charge of the grand jury.

Mr. STEUER. Why, if charges were made in which 40 names were mentioned, and it took, say, three or four or five weeks to present those names, bearing in mind that even grand jurors, however conscientious they are, have a much greater interest in their own business than they have in the rights of the defendants—if a prosecuting officer whom they have been taught to look up to and whom they should look up to and be guided by—he is made by law their adviser—if he hands in a list of names, isn't there natural assumption—would it not be yours and mine if we were lay people—that he knows better than we, and would we not be guided by his suggestion, and why should not those men be? I do not regard it as even the subject of criticism or censure. I just think it is the natural thing to happen.

Mr. GARD. I am not offering it in any sense of criticism, just as a matter of procedure, because I think we are in entire accord. I am not taking your place as a witness and substituting my belief for yours. Probably best withdraw the word "belief." But is it not your idea, too, that if evidence covering, say, three or four months was heard, and then a list of persons was handed in by the district attorney, under the circumstances of intimate association that you have described, that the grand jury itself would be guided by that fact?

Mr. STEUER. I think they would absolutely indict the men on that list.

Mr. GARD. That is all.

Mr. NELSON. I just want to say for your benefit, before our Committee on the Judiciary in the House, we are constantly dealing with these questions and we have got some very interesting information from you as to the scope of this conspiracy charge, and I personally want to say I think it is the duty of the members to limit that scope hereafter by some legislation.

Mr. STEUER. If I can be of any service at any time, I certainly feel it is a duty and a pleasure to render it.

Mr. GARD. I think that is all, Mr. Steuer. Thank you very much for your attendance.

TESTIMONY OF MR. JACOB B. ENGEL.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. You interrogate him, Mr. Walsh.

Mr. WALSH. You are an attorney at law, are you?

Mr. ENGEL. I am.

Mr. WALSH. Your office is here in the city?

Mr. ENGEL. 130 Nassau Street, Borough of Manhattan.

Mr. WALSH. Do you know one Frank Stafford?

Mr. ENGEL. I do.

Mr. WALSH. Did you ever act as his counsel?

Mr. ENGEL. I did.

Mr. WALSH. What was the occasion?

Mr. ENGEL. On the occasion of his having been indicted, or arrested, on a charge of perjury, and subsequently through the proceedings on through the trial.

Mr. WALSH. Mr. Safford was tried, was he?

Mr. ENGEL. He was.

Mr. WALSH. Before what judge?

Mr. ENGEL. Judge Hough, of this district.

Mr. WALSH. Did you appear as his trial lawyer?

Mr. ENGEL. I did.

Mr. WALSH. What did you say the charge was against Mr. Safford?

Mr. ENGEL. Perjury. The gist of the charge was his having sworn at the hearing of Rea Tanzer that he recognized and identified James W. Osborne as the man who was at the hotel with her, on a certain day, in Plainfield, N. J.

Mr. WALSH. Now, before his arrest, have you any knowledge of any attempt on the part of anyone connected with the United States district attorney's office to get Mr. Safford to change that statement?

Mr. ENGEL. Why, none, excepting conversations that I had with him; but he did not identify the parties direct and the question might arise as to whether I ought to disclose conversations I had with him, unless the committee so direct.

Mr. CARLIN. It is not necessary. He is here to testify for himself.

Mr. ENGEL. Yes.

Mr. WALSH. Did you have any conversations with any person connected with the district attorney's office, in respect to your acting as counsel in the case?

Mr. ENGEL. I did.

Mr. WALSH. And who was it that had that conversation with you, can you tell us?

Mr. ENGEL. Both Mr. Marshall and Mr. Wood, particularly Mr. Marshall.

Mr. WALSH. Well, now, can you tell what Mr. Marshall said to you in respect to your acting as counsel for Mr. Frank Safford?

Mr. ENGEL. Why, it was I that called on Mr. Marshall, not he on me, and the occasion thereof was this: When I had been retained by Mr. Safford and the case having assumed its publicity, and the district's attorney's office having been after all of the parties connected with the so-called Osborne-Tanzer proposition, I received notices from members of the bar and telephone messages that I ought not to appear for Mr. Safford, that it would be advisable for me not to appear in this case; that it would possibly bring me into trouble. My responses were that I feared no trouble; that my conscience was perfectly clear; that my record was clear and I had no fear as to any results if I would do my duty as a lawyer, but in order to satisfy myself, I deemed it my duty to call on Mr. Marshall, and that was the occasion of the call.

Mr. CARLIN. To satisfy yourself as to what?

Mr. ENGEL. Satisfy myself as to any of those rumors or any of those threats, so-called, possibly included me. To be frank, some said, "You look out or you will get into trouble." Of course, I knew none of the parties connected with the transaction and had not done anything, but I wanted to find out for myself whether these things emanated from the fountain head, and I called on Mr. Marshall and told him I had been retained, and he knew it, for Mr. Safford. I had appeared in the matter. I wanted to know whether there was any animus against me for having appeared. He assured me there was absolutely none; that none of those things had emanated from his office, and I felt satisfied what he said was correct. That was the occasion of my call on Mr. Marshall.

Mr. WALSH. Was it a fact you were threatened with indictment by somebody if you acted as counsel for Safford?

Mr. ENGEL. I would not put it in that form. I would say now that I never received any threat from anybody who could officially make a threat of that character. It was intimated to me by members of the bar and other persons that I had made an error in taking the case. I said I didn't think I had; that every lawyer has a right to defend.

Mr. NELSON. I would like to get clear in my mind whether that advice you got, by telephone and otherwise from members of the bar, urging you not to take this case was suggested to you, so far as you know, to protect you from being indicted by the office or incurring the enmity of some outside lawyer; which was it?

Mr. ENGEL. To answer that would require this statement. It is difficult for me to convey to the committee the atmosphere that then existed.

Mr. NELSON. I would like to have you describe it.

Mr. ENGEL. Consequently, I must make my answer a little broader than the categorical yes or no.

Mr. NELSON. Make it as broad as you like.

Mr. ENGEL. At that time indictments were handed out as rapidly as sandwiches are in a barroom.

Mr. NELSON. Where?

Mr. ENGEL. As sandwiches are in a barroom.

Mr. CARLIN. Do they hand out sandwiches in a barroom?

Mr. ENGEL. Yes.

Mr. GARD. The committee is entirely unacquainted with that.

Mr. ENGEL. I, however, have had some experience, and at that time there were many lawyers being indicted, whether rightfully or not I am not here to say.

Mr. GARD. Indicted in what court, may I ask?

Mr. ENGEL. In this court.

Mr. GARD. Federal court?

Mr. ENGEL. Federal court. And I did not know whether it was prior or subsequent to the Slade indictment, but I know it was subsequent to some of their indictments, and lawyers naturally meeting in the corridors of the courthouse, coming over here to attend to my business, would meet me and talk to me, and would tell me, "Why did you take a retainer of that character? And this whole case bears an atmosphere of such a character that it is bound to get you into trouble, as it has gotten all others into trouble," and I said to them, as I say now, that I don't know anything about that. I am going to

do my duty fearlessly as a lawyer. I don't know Rae Tanzer. I don't any of the parties. I don't know Frank Safford, excepting he retained me, and the consequences were I went ahead, but as a result that for fear that some of these rumors might have emanated from headquarters, so to term it, I made up my mind that I would see Mr. Marshall, in order that I would set myself straight with him and he to me, so there should be a clear understanding in case something would occur in the future.

Mr. NELSON. The impression in your mind, then, was that the danger was from the office of the district attorney?

Mr. ENGEL. No; I won't put it as strongly as that.

Mr. NELSON. Why did you go there?

Mr. ENGEL. I went there for the purpose of talking to Mr. Marshall.

Mr. NELSON. So these talks must have been along that line, or you would not have gone there?

Mr. ENGEL. I would say that that was an inducing cause of my going there.

Mr. NELSON. In other words, the gist of the warnings you received were, there was danger of an indictment against you if you had anything to do with the case?

Mr. ENGEL. I think that is broader than I would put it. I did not fear an indictment, because my conscience was perfectly clear and I was not afraid of it, but I went there for the purpose of letting Mr. Marshall understand the conditions, and I wanted to talk to him about it.

Mr. NELSON. Did you tell him of these warnings?

Mr. ENGEL. Yes; I told him that I had heard expressions—words expressed to me, that this office had some animus against me for having taken up this case, and Mr. Marshall assured me that absolutely not; that he had every regard and respect for me, and I reciprocated those remarks and we separated.

Mr. NELSON. That is all I have to ask.

Mr. WALSH. Had Rae Tanzer been indicted at this time?

Mr. ENGEL. Yes; she must have been, because Safford was arrested on a charge of perjury in her—I don't know whether she had been indicted, but I know she had been arrested, and at the hearing before the commission Safford was a witness and as a result of the testimony he gave there he was arrested.

Mr. WALSH. Were her sisters indicted?

Mr. ENGEL. I do not know. I am not positive. The records will show that.

Mr. WALSH. Were the Slades and one McCullough indicted at that time?

Mr. ENGEL. If not then, almost about that time. There was a series of indictments, one right after the other, and as to the exact rotation or date, I can not give you, but all within a very short time.

Mr. WALSH. Is it a fact that at that time all of the persons prominently mentioned in connection with the Rae Tanzer case, from the Rae Tanzer side, were indicted?

Mr. ENGEL. My best recollection is that that was so, but I can't state positively. I would prefer to consult the records on that. I may be in error, but my best recollection is that that is so.

Mr. WALSH. Do I understand this was an individual charge against Mr. Stafford, or was it a conspiracy charge?

Mr. ENGEL. No.

Mr. WALSH. He was not charged in any count with conspiracy then?

Mr. ENGEL. No; the charge against him was plain perjury, as known under the statute, swearing falsely to a matter.

Mr. WALSH. He was tried before Judge Hough?

Mr. ENGEL. At the time of the trial; yes, sir.

Mr. WALSH. At the time of the trial had Judge Hough been holding the criminal term?

Mr. ENGEL. I do not know what Judge Hough was doing at that time.

Mr. CARLIN. The committee is familiar with that, Mr. Walsh. We know the routine of that.

Mr. WALSH. That will be all, then, of this witness.

Mr. CARLIN. You can stand aside. The committee will excuse you.

I would like to recall the clerk of the court we had on the stand this morning.

TESTIMONY OF MR. WILLIAM H. LEARY—Continued.

Mr. CARLIN. Mr. Clerk, I want to ask you if you have now the records of the indictments in the Oppenheimer case.

Mr. LEARY. Yes, sir.

Mr. CARLIN. Will you from the record tell me how many indictments there were against Oppenheimer?

Mr. LEARY. Against Herman H. Oppenheimer four indictments I have filed.

Mr. CARLIN. Four?

Mr. LEARY. Yes.

Mr. CARLIN. Mr. Oppenheimer, I think, testified that there were seven. Could you be mistaken about the number?

Mr. LEARY. Did he say seven?

Mr. CARLIN. I understood his testimony to be that there were seven indictments against him; that there were three or four perhaps of which no record was made. Could that be possible?

Mr. LEARY. The records of this court show there were four indictments filed against Herman Oppenheimer.

Mr. CARLIN. What does the record show became of the first one? Is Oppenheimer in court?

Mr. SLADE. Yes; he is.

Mr. OPPENHEIMER. Yes, sir.

Mr. CARLIN. Did you testify there were seven indictments against you?

Mr. OPPENHEIMER. Yes.

Mr. CARLIN. How is it the records of the court only show four?

Mr. OPPENHEIMER. Mr. Leary will remember one of them was handed out and the court ordered no record would be made of it.

Mr. CARLIN. Is that a fact, Mr. Leary, the court ordered no record to be made of one indictment?

Mr. LEARY. I will tell you my recollection of that incident, and Mr. Oppenheimer's don't seem to agree. Our grand juries usually

come in at 1 o'clock promptly. If there is a petit jury present in the court room, they are excused until the grand jurors come in. One day the grand jury came in and presented an indictment against Mr. Oppenheimer and Mr. Samuels. The grand jury was called, a quorum was present, and I asked the foreman if he had any bills to present to the court. The foreman handed up one indictment. I handed it to the judge. The judge handed it back to me. I looked at it. I always glance at the indictments to see if they are signed by the foreman and district attorney. Mr. Oppenheimer, as I recall it, was in the court room with his lawyer, Mr. Rose. I was where the clerk sits—here—and Mr. Oppenheimer and Mr. Rose were ready to plead to that indictment, but I found it had not been signed by the district attorney, and I turned it back to the judge and says, "Judge, this indictment has not been signed by the district attorney." He says, "This is not a true bill; I decline to accept it," and handed it back to the grand jury.

Mr. CARLIN. There is no record of that indictment?

Mr. LEARY. No, sir; because it was not received by the court.

Mr. CARLIN. That makes five?

Mr. LEARY. That makes five.

Mr. CARLIN. That was certainly sent out by the grand jury or you would not have had it.

Mr. LEARY. It was handed to me by the grand jury.

Mr. CARLIN. What has become of that indictment?

Mr. LEARY. I handed it to the judge; he handed it back to me to take Oppenheimer's plea. Rose and the defendant were at the bar. Then I discovered the indictment had not been signed by the district attorney. I said, "Judge, this indictment has not been signed by the district attorney." He says, "It is not a true bill without the district attorney's signature," and he handed it back to me and I handed it back to the grand jury.

Mr. CARLIN. You took no record of that?

Mr. LEARY. No; because it was not received.

Mr. CARLIN. Then there are four you have a record of?

Mr. LEARY. That would be five.

Mr. CARLIN. There are four that you have a record of, and the one you have a recollection of; that makes five. What about those other two?

Mr. OPPENHEIMER. The first indictment was entirely different from any of the other six. That, as I explained to your honors on the witness stand, was a hearing to me—several hearings, five or six—in the office of Mr. Marshall, and after my statements and evidence had been produced my name was not on the indictment after it had been found by the grand jury. That indictment, therefore, there would be no record of. I explained that, but I was on indictment, and it was rising out of the same case and the same facts. That is the six.

Mr. NELSON. You simply do not make a record of indictments that don't stick?

Mr. LEARY. I never know anything about them. They are not even handed up.

Mr. CARLIN. In this case it was handed up to you by the foreman?

Mr. LEARY. Well, it was not signed by the district attorney.

Mr. CARLIN. It was handed up?

Mr. LEARY. Yes; it was handed up, but not received by the court.

Mr. CARLIN. Handed up to you by the foreman?

Mr. LEARY. Yes; by me handed to the court, and by the judge handed back to me.

Mr. CARLIN. And you handed it back to the foreman?

Mr. LEARY. I handed it back to the foreman, yes.

Mr. CARLIN. What does the record show that the first indictment was quashed for?

Mr. LEARY. The first indictment against Herman H. Oppenheimer, according to my record, was filed February 24, 1914, and on March 24 Herman Oppenheimer filed a demurrer to that indictment. On October 1 Judge Thomas filed his opinion, indictment dismissed as to Oppenheimer, Samuels, and Hepner.

Mr. CARLIN. There is no motion to quash, according to your records on that?

Mr. LEARY. No; the record is a straight demurrer. •

Mr. OPPENHEIMER. There was a motion to quash, which was granted. Mr. Leary, you will probably remember that.

Mr. CARLIN. There is a vast difference between a demurrer and a motion to quash.

Mr. LEARY. There may have been a motion to quash incorporated in that demurrer, but I have the demurrer here filed.

Mr. OPPENHEIMER. There were two filed on that day?

Mr. LEARY. Yes; that is right. There were two indictments filed that day.

Mr. OPPENHEIMER. All papers were filed as to each?

Mr. CARLIN. Does the record show a motion to quash?

Mr. LEARY. Yes; to the second indictments. Two indictments were filed February 24. To one indictment a demurrer was filed; to the second, a demurrer and motion to quash was filed.

Mr. CARLIN. Was motion to quash sustained?

Mr. LEARY. Judge Thomas's opinion reads about as follows: It says indictment dismissed as to Herman H. Oppenheimer.

Mr. CARLIN. That is all your record shows?

Mr. LEARY. Yes.

Mr. OPPENHEIMER. The opinion is on file; says motion quashed.

Mr. CARLIN. What does it show with reference to the third and fourth indictments?

Mr. LEARY. The third indictment was filed November 23, 1914. Motions to quash were filed December 1, 1914. Motion to quash, plea in abatement and plea in bar and demurrer, Herman H. Oppenheimer.

Mr. CARLIN. What was the disposition of this?

Mr. LEARY. That indictment—a nolle-pros seems to be entered on this indictment on December 22, 1914, as to Oppenheimer and Dietz.

Mr. CARLIN. Entered subsequent to the filing of the motions?

Mr. LEARY. Yes, sir. The motions were filed December 1, 1914, and the nolle-cesses entered December 22, 1914.

Mr. CARLIN. What happened with reference to the fourth indictment?

Mr. LEARY. The fourth indictment was filed December 21, 1914. January 4, 1915, filed motion to quash, plea in abatement, plea in bar, and demurrer, Herman H. Oppenheimer.

Mr. CARLIN. What was the disposition of it?

Mr. LEARY. It was disposed of February 2, 1916, filed opinion from Judge Pope, indictment ordered quashed, and allowing defendants to go without bail thereunder. On the 26th of February, 1916, an order was signed granting motion to quash. That order was signed by Judge A. N. Hand of this district.

Mr. CARLIN. What has become of the indictment that is now pending?

Mr. LEARY. None now pending. That was the last. That is closed now.

Mr. CARLIN. That was appealed by the Government?

Mr. LEARY. Yes, sir; the Government has appealed. They have filed their petition for writ of error and it is now on its way to the United States Supreme Court or will be shortly.

Mr. CARLIN. Have you got here a list of the witnesses that were summoned? Well, never mind, I can get them later.

Mr. NELSON. Have you the form of oath that the grand jurors take?

Mr. LEARY. Yes, sir.

Mr. NELSON. Can you give it?

Mr. LEARY. I know it.

Mr. NELSON. Will you repeat it?

Mr. LEARY. "You, as foreman of this grand inquest for the body of the southern district of New York, do solemnly swear that you shall diligently inquire and true presentment make of all such matters and things as shall be given to you in charge, all of which you shall keep secret. You shall present no one from envy, hatred, or malice, neither shall you leave anyone unpresented through fear, favor, or affection, gain, reward, or hope thereof, but you shall present all things truly as they come to your knowledge, according to the best of your understand, so help you God."

That oath is administered to the foreman. Then the other 22 jurors receive and take the following oath: "Gentlemen, the oath your foreman has taken on his part, you and each of you do solemnly swear that you will well and truly keep and observe on your part, so help you God."

Then the grand jurors remain standing while the charge of the court is delivered.

Mr. CARLIN. Do you administer any oath to the stenographer who takes the minutes in the grand-jury room?

Mr. LEARY. No, sir.

Mr. CARLIN. Is there any oath administered to the assistant district attorneys who interrogate the witnesses in the grand-jury room?

Mr. LEARY. Never heard of an oath being administered to them.

Mr. NELSON. What basis have you for that oath? How did you get the form?

Mr. LEARY. Commissioner Shields gave it to me years ago. It is about the same form used in the State courts.

Mr. NELSON. You have seen it in writing? Is it in any law book?

Mr. LEARY. Yes; it is in the State—practically the same oath as administered to the State grand juries. I have seen it in the penal code.

Mr. NELSON. Is it a printed form, or is it a traditional oath that is handed down?

Mr. LEARY. I think that it is a traditional oath, but I have seen the same oath, word for word, in the State penal code.

Mr. CARLIN. Never found it in any Federal statute, have you?

Mr. LEARY. No; I never did.

Mr. CARLIN. Mr. Clerk, we are going to take a recess until 2 o'clock or 2.15. Will you have at that time the records here for the committee's use, relating to the indictments against the Slades?

Mr. LEARY. Yes, sir.

Mr. CARLIN. The committee will now take a recess until 2.15 o'clock p. m.

(Whereupon a recess was taken until 2.15 o'clock p. m.)

AFTER RECESS.

The subcommittee reconvened, pursuant to the taking of recess, at 2.15 o'clock p. m.

Mr. CARLIN. The committee will come to order. Is Mr. Holme present?

A VOICE. Here.

Mr. CARLIN. Take the stand, Mr. Holme, please, sir.

TESTIMONY OF LEONARD R. HOLME.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. What is your address?

Mr. HOLME. One hundred and fifty-seven West Eightieth Street; newspaper reporter.

Mr. CARLIN. Are you the correspondent of the New York Times?

Mr. HOLME. Yes, sir.

Mr. CARLIN. I hand you a copy of the New York Times, of the headline date March 3, 1916, and call your attention to an article on the sixth column, and ask you if you wrote that article [handing paper to witness]?

EXHIBIT No. 29, MARCH 3, 1916.

[New York Times, Friday, Mar. 3, 1916.]

MARSHALL REFUSES BUCHANAN EVIDENCE—TELLS CONGRESS COMMITTEE HE IS ACTING UNDER ORDERS FROM THE ATTORNEY GENERAL—INVITES TEST OF HIS POWER, AND SUGGESTS THAT PURPOSE OF THE INQUIRY IS TO SAVE PRO-GERMAN PARTISANS.

A clash came yesterday between the congressional committee investigating charges filed against United States District Attorney Marshall and the Department of Justice. The committee is anxious to obtain the minutes of the grand jury proceedings which resulted in the indictment of Congressman Buchanan. David Lamar, and others connected with labor's peace council and to inspect the evidence which was brought against them. Attorney General Gregory, however, has instructed Mr. Marshall to decline to give this information, and Mr. Marshall himself has informed the committee that if they will press their demands on him personally he will test the committee's power immediately.

It is the belief in the district attorney's office that the real aim of the Congress investigation is to put a stop to the criminal investigation of the pro-German partisans, and that if the evidence which the Government has amassed were revealed at this stage of the prosecution serious impediments would be put in the way of further progress. The investigation is by no means finished, and it is believed that soon the Federal officials will have gathered enough evidence to implicate other men well known in public life as having been mixed up in the German plots.

The first hint of trouble arose when Raymond H. Sarfaty, the assistant district attorney who handled the case of Congressman Buchanan, David Lamar, von Rintelen, and the other members of labor's peace council, was called as a witness. To almost the first question put to him by Congressman Carlin he replied:

"I have been instructed by Mr. Marshall to decline respectfully to answer any questions concerning the grand jury which indicted Mr. Buchanan. These instructions were in compliance with the wishes of the Attorney General."

The committee pried Mr. Sarfaty with many questions concerning the Buchanan grand jury, and some he answered, but to one in particular he refused to reply. It was:

"Was any evidence produced against Representative Buchanan?" which came from Congressman Gard.

As Chairman Carlin dismissed Mr. Sarfaty he said, with emphasis:

"I hope you will be in New York for the next few days. We may have some interesting information for you."

A little later Mr. Sarfaty returned and said Mr. Marshall had told him he had mistaken his instructions and that he was authorized to answer that particular question, but the committee curtly informed him it would send for him when it needed him.

At the afternoon session Assistant District Attorney Roger B. Wood also informed the committee he must decline to answer questions concerning the grand jury, but as his examination turned on his own conduct in the Tanzer, Kugel, and Keen cases the dangerous ground was not approached. In the court room were sitting two of the grand jury stenographers who had received subpoenas, but they were not called. It is expected that they will be required to testify to-day.

The instructions District Attorney Marshall gave to his assistants were based on a telegram which he had received from Attorney General Gregory. This informed him that he might assure the congressional committee that there had been plenty of good evidence laid before the grand juries which had indicted Buchanan, Lamar, Rintelen, and labor's peace council, and Rae Tanzer and David and Marshall Slade, but he was to decline respectfully to give the committee any inkling of what that evidence was.

Mr. Marshall sent a copy of the telegram to the committee and offered, if it desired, to show it the original. He informed it that the grand jury minutes were in his own keeping and that if it desired to inspect them he was the proper man to examine. He was prepared to decline to produce them and it would then be possible to test the rights of the congressional committee immediately.

This could be done, it was said yesterday, by the arrest of District Attorney Marshall for contempt. He could then immediately sue out a writ of habeas corpus, and this would be returnable before one of the judges of this district court.

"That power," he said, "is undoubted, and it can be used on occasion by the Attorney General as the representative of the President in certain matters, but it is very doubtful whether it could be stretched to cover a mere assistant district attorney."

District Attorney Swann, to whom had been sent the case of Bard & Keen when it was decided there was no ground for a Federal prosecution, handed to the committee the minutes of the Federal grand jury in the matter which had been referred to him. He disagreed entirely with the view Mr. Wise had taken the day before on the uselessness of grand juries.

Asked his opinion of Mr. Marshall, he declared he knew of no lawyer whom he would rather see Federal attorney in this district, and especially praised his work against the bankruptcy ring.

"There is not a member of it," he said, "who would not go to any length to wreck Mr. Marshall."

The investigation will proceed this morning, but the committee is expected to be telegraphed at any moment to return to Washington.

Mr. HOLME. I wrote the article, sir; not the headline.

Mr. CARLIN. You did not write the headline?

Mr. HOLME. No, sir.

Mr. CARLIN. Did you write the whole of the article?

Mr. HOLME. Yes, sir.

Mr. CARLIN. Did you have a conference with anybody in the district attorney's office before that article was written?

Mr. HOLME. Not in regard to what I wrote in that article.

Mr. CARLIN. Well, did you have a conference with anybody in the district attorney's office before the article was written?

Mr. HOLME. That is a little hard to answer directly, sir. I sought information in the building. I was here, but nobody inspired that article in any way.

Mr. CARLIN. I have not asked you that question. I asked you did you confer with anybody in the district attorney's office before that article was written?

Mr. HOLME. I did.

Mr. CARLIN. Who?

Mr. HOLME. I respectfully decline to answer the source of my information, sir; I respectfully decline to give you the source of my information.

Mr. CARLIN. I asked you the question, who it was that you conferred with, before you wrote that article, in the district attorney's office.

Mr. HOLME. Sir, it is a little difficult for me to answer that question, because I did not confer on what I was writing at all. I simply went to the district attorney's office and asked certain information, but anything that is in that article is mine.

Mr. CARLIN. I again ask you the question, who in the district attorney's office did you confer with before you wrote that article?

Mr. HOLME. I can only say, sir, I can not answer that question.

Mr. CARLIN. Why can you not answer the question?

Mr. HOLME. Because I have always understood that no newspaper man would ever give any source of information without receiving permission to do so from the man who gave him that information.

Mr. CARLIN. Have you always understood that a newspaper man need not answer questions when he is under oath before a court or an investigating committee?

Mr. HOLME. I think I have understood that there is sometimes difficulty about it; I have known there to be difficulty about it.

Mr. CARLIN. Did you confer with Mr. Marshall before you wrote this article?

Mr. HOLME. I respectfully decline to answer the question, sir.

Mr. CARLIN. Did you confer with anybody in Mr. Marshall's office?

Mr. HOLME. I respectfully decline to answer that question, sir.

Mr. CARLIN. Mr. Sergeant at Arms, take charge of this witness and keep him in your custody until the further order of this committee.

Mr. CARLIN. Is Mr. Farrington here?

TESTIMONY OF MR. EARL M. FARRINGTON.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Mr. Walsh, did you want to ask some questions of this witness?

Mr. WALSH. Yes, sir.

Mr. CARLIN. Go ahead.

Mr. WALSH. Your business, Mr. Farrington?

Mr. FARRINGTON. Wholesale millinery manufacturer.

Mr. WALSH. And you are associated with some one in business?

Mr. FARRINGTON. Why, I am in business for myself; it is a corporation.

Mr. WALSH. Do you know Rae Tanzer?

Mr. FARRINGTON. Why, she was employed in our factory in Fourteenth Street some, oh, two years ago.

Mr. WALSH. Did you at one time have a conversation with her about one Osborne?

Mr. FARRINGTON. Why, yes, I had a conversation with her. She approached me and the details of that conversation I think that I might better show you in a statement which I made at that time, because possibly some of the facts might slip my mind.

Mr. WALSH. The witness volunteers a statement.

Mr. CARLIN. I did not catch just what he said.

Mr. FARRINGTON. At that time that Miss Tanzer made a statement to me in our factory, or shortly after that, I gathered together the facts in a statement, feeling that I might have been called upon for a statement, and that statement I have in my pocket.

Mr. CARLIN. You mean you have it written out?

Mr. FARRINGTON. Yes, typewritten.

Mr. CARLIN. Just file it with the clerk.

Mr. FARRINGTON. If I am not out of order, Mr. Marshall called for a statement, and that is the very one which I gave him.

Mr. CARLIN. You have another copy of this, have you?

Mr. FARRINGTON. No; I have not. I would not like to give it up.

Mr. CARLIN. Then I will just ask you to give us a copy of it.

Mr. FARRINGTON. I will be glad to. That covers all the details.

Mr. GARD. This is a statement that Mr. Marshall, the district attorney, asked you for?

Mr. FARRINGTON. Yes; he asked me for a statement, and I was rather careful about it, and gathered the facts and sent it to Mr. Marshall from my own lawyer's office, and that is the only copy I have, however, and I would not like to give it up.

Mr. WALSH. Mr. Farrington, can you tell us when it was that Miss Tanzer made this statement to you?

Mr. FARRINGTON. I think even that fact is in there. I would not care to trust to my memory, but at that time I know it was within a short time that that statement was made, and I am sure that the fact would be in there and correctly put; but I think that it was possibly—either between the 15th and 30th of February. I think it will show in the statement along there.

Mr. WALSH. Of last year?

Mr. FARRINGTON. Of 1915, yes, sir.

Mr. WALSH. Where were you when she made the statement to you?

Mr. FARRINGTON. In our factory.

Mr. WALSH. How long had she worked for you up to that time?

Mr. FARRINGTON. Oh, about seven or eight months, I would presume; possibly a year.

Mr. WALSH. Does this paper that you have filed with the committee contain a statement of the facts that she gave to you?

Mr. FARRINGTON. Yes; that covers it quite thoroughly.

Mr. WALSH. Tells the whole story?

Mr. FARRINGTON. Yes.

Mr. WALSH. And the substance of it was that she had met a man called "Oliver Osborne"?

Mr. FARRINGTON. Yes, sir; I think that that was it.

Mr. WALSH. And that she subsequently discovered or claimed to have discovered that the man was James W. Osborne?

Mr. FARRINGTON. I am quite sure that that is the case also in the statement. I won't be sure of that being James W. Osborne, but Osborne is in the statement, I am quite sure. I remember that name distinctly.

Mr. WALSH. Up to that time, Mr. Farrington, what did you know about the girl herself; about her character?

Mr. FARRINGTON. I have 200 people in our factory, and I do not—we get a very short lookup on their character, and I really knew nothing of the girl. I did take occasion afterwards of calling her former employer, and going more thoroughly into it, but about her character I can tell you nothing, except that between the hours of eight and six she apparently was right in her place. She seemed to be a very nice young lady.

Mr. NELSON. What was her position in your employment?

Mr. FARRINGTON. We have several departments, and she was a forelady over possibly 15 hand sewers, young women.

Mr. NELSON. What wages was she receiving?

Mr. FARRINGTON. I think it was \$16 or \$18 a week. I could verify that, of course.

Mr. WALSH. In consequence of her talk with you, did you give her any advice, or tell her anything about consulting a lawyer?

Mr. FARRINGTON. No, sir; I did not. I told her, as a matter of fact, that I did not wish to be mixed up in it or any lawyer friends of mine.

Mr. WALSH. You told her that at that time?

Mr. FARRINGTON. Yes.

Mr. WALSH. Did you afterwards know that she had consulted various lawyers?

Mr. FARRINGTON. I did not know it until—that was the last time she spoke to me of the case—until about, oh, I presume about 10 days later than that, and she came to me and said that she had consulted a number of lawyers, and it seemed to me, oh, I think she named three or four. Finally, I do remember her naming Mr. Steuer, I think it was—Max Steuer.

Mr. WALSH. Yes; there is such a lawyer. Did she at that time give you any letters?

Mr. FARRINGTON. Yes; at that time. The reason that she gave me the letters was this; I think that is covered in the statement, too.

Mr. WALSH. Did you take possession of those letters?

Mr. FARRINGTON. Yes; they put them right in the office, in our safe there.

Mr. WALSH. What did you finally do with the letters?

Mr. FARRINGTON. They were handed over—at least, our book-keeper handed them at my direction—to, I think, Mr. Slade, her lawyer.

Mr. WALSH. Were those letters in your possession from the time she gave them to you until they were turned over to Mr. Slade?

Mr. FARRINGTON. They were in our safe all the time, I am sure.

Mr. WALSH. There were three of them, were there?

Mr. FARRINGTON. I do not recall. There was a package of them. There were two or three, or maybe four.

Mr. WALSH. Do you know anything about two men calling on Miss Tanzer and demanding those letters from her?

Mr. FARRINGTON. That was really the reason why the letters were in our safe. Miss Tanzer, I found her in a very agitated mood one morning, and not properly attending to her work, and I asked her what was the matter with her, and she told me that two great, big men had come up to the factory and demanded some letters she had in her possession. I said, "What letters do you mean?" She said, "These letters I have here"; and that was the occasion of her telling me of this story; and then I said to her—I went right in the office to verify what she said about the men coming up to the factory, because I am not there very often; I am there possibly an hour or two in the morning, and the rest of the day uptown; and our bookkeeper said that he verified the fact that two men, he told me, who were supposedly, he said, from the central office, called and asked to see Miss Tanzer; and he said, in so far as they said they were from the central office, he could not do very much else than let them see the young lady.

Mr. WALSH. What is your bookkeeper's name?

Mr. FARRINGTON. Mr. Schuyler.

Mr. WALSH. Do you know where he lives?

Mr. FARRINGTON. No; I do not.

Mr. WALSH. Is he still in your employ?

Mr. FARRINGTON. Yes; he still is.

Mr. WALSH. Can you locate that date for us, or does this paper contain it?

Mr. FARRINGTON. Well, I should imagine that would contain it, because that was written over a year ago, I imagine, or pretty nearly a year ago.

Mr. WALSH. Suppose you consult it and see if you can give us the date on which these two men came to your factory looking for the letters.

Mr. FARRINGTON (after consulting a typewritten paper). It may seem strange, but this is the first time I have seen this in a year, so you will have to give me a little time to go through it. No, evidently—I see it says here about the men coming to the factory, but the date is not mentioned here.

Mr. WALSH. Have you got any way in which you could locate that date for us?

Mr. FARRINGTON. I would not dare do it from memory, but I am rather systematic, and I imagine in the factory I would have a diary of it.

Mr. WALSH. Could you get that date and send it to the clerk and put it in this copy that you are going to make?

Mr. FARRINGTON. If it is in the book I will be very glad to give it to you.

Mr. WALSH. Now, Mr. Farrington, after that happening of the two men coming there, and after your delivering these letters to Mr. Slade, did you have anything more to do with the matter?

Mr. FARRINGTON. No; I never heard of the case until it came out in the papers and Mr. Marshall sent for me.

Mr. WALSH. It came out in the papers that Miss Tanzer had brought an action against James W. Osborne, did it not?

Mr. FARRINGTON. Yes.

Mr. WALSH. Was it after that that Mr. Marshall sent for you?

Mr. FARRINGTON. Yes.

Mr. WALSH. How long after that?

Mr. FARRINGTON. Well, I think Mr. Marshall could verify that, or maybe this is dated. This is dated May 6, and I presume that he asked for the statement maybe two days before that.

Mr. WALSH. Do you think it was as long after the bringing of the civil action as May 6? Would it aid you to call your attention to the fact that the civil action was brought March 16?

Mr. FARRINGTON. I would not care to pin that date down without looking at the book.

Mr. WALSH. I see. Where was it you saw Mr. Marshall?

Mr. FARRINGTON. I came down to his office with my attorney and told him these very facts I have told you here.

Mr. WALSH. Will the paper that you will submit to the committee contain the statement of facts that you made to Mr. Marshall?

Mr. FARRINGTON. It is a carbon copy of it.

Mr. WALSH. A carbon copy? Oh, you did submit to him a statement in writing; is that right?

Mr. FARRINGTON. Surely; that is what this copy is.

Mr. WALSH. And that is a copy of it?

Mr. FARRINGTON. Yes.

Mr. WALSH. Were you subpoenaed to come to his office?

Mr. FARRINGTON. I was.

Mr. WALSH. And can you tell us whether it was a grand-jury subpoena?

Mr. FARRINGTON. No; I could not, because I called up and, I think, spoke to one of his assistants and made the appointment. I think it was in the afternoon; but I just spoke to him in his own private office.

Mr. WALSH. Subsequently were you called before the grand jury?

Mr. FARRINGTON. No.

Mr. WALSH. You were never called before the grand jury?

Mr. FARRINGTON. No.

Mr. WALSH. Now, do you recollect Rae Tanzer being arrested and brought before Commissioner Houghton?

Mr. FARRINGTON. Yes, I knew she was arrested.

Mr. WALSH. Did you have anything to do with the procuring of bail for her?

Mr. FARRINGTON. Why, no, sir; I did not.

Mr. WALSH. Did your partner?

Mr. FARRINGTON. My partner did not.

Mr. WALSH. Your partner did not?

Mr. FARRINGTON. No.

Mr. WALSH. Can you tell the committee anything in reference to the fact of how Rae Tanzer procured bail?

Mr. FARRINGTON. Why, yes.

Mr. WALSH. If you will, please.

Mr. FARRINGTON. I could. I left the firm, after consultation—left that in the hands of our attorney in Brooklyn, who can tell you the details.

Mr. WALSH. And his name is what?

Mr. FARRINGTON. Hertz. He knows more of the details than I do.

Mr. WALSH. He took that up at your direction, did he?

Mr. FARRINGTON. Yes; he investigated it. at our expense. He found out whether the young lady was going to get married.

Mr. WALSH. I take it, then, that you were still interested in Miss Tanzer up until that time?

Mr. FARRINGTON. The firm felt that what we did not want to do was anything of the young lady, what she was—well, we did not want to stand behind her—the firm did; that if it was any one of our 200 employees we would like to stand behind her.

Mr. WALSH. That is all.

Mr. FARRINGTON. But when I say "stand behind her" I mean that the young lady seemed to have been put in jail on very short notice and the firm spoke to our attorney. By the way, if that is all right, the attorney whom we told this story to, is here in the room with you, if you do not want him to come over again. May I be glad to tell you the further details of it.

Mr. WALSH. That is for the committee to decide.

Mr. CARLIN. Have you finished with this "show"?

Mr. WALSH. Yes.

Mr. CARLIN. I want to ask you one question.

Mr. FARRINGTON. Yes, sir.

Mr. CARLIN. I understood that you gave Miss Tanzer a list of attorneys that you desired her to consult with a view to employing one of them.

Mr. FARRINGTON. Oh, no.

Mr. CARLIN. You did not do that?

Mr. FARRINGTON. Absolutely not.

Mr. CARLIN. You never suggested any lawyer to her at all?

Mr. FARRINGTON. Never suggested anyone.

Mr. CARLIN. Did you suggest that she employ counsel?

Mr. FARRINGTON. Absolutely not.

Mr. CARLIN. Never even made that suggestion to her?

Mr. FARRINGTON. No, sir.

Mr. NELSON. She had a list that she submitted to you?

Mr. FARRINGTON. Oh, no; she did not.

Mr. NELSON. How?

Mr. FARRINGTON. No, sir; she did not. I never knew where she was going. As a matter of fact, as I stated, it must have been 10 days after she came to me. I never saw the young lady to discuss it with her.

Mr. NELSON. I thought you testified that you saw the names of the Slade Bros. or something?

Mr. FARRINGTON. No; I did not. I testified that eventually she, 10 days later, said that she had employed Slade & Slade.

Mr. NELSON. Do you know whether she consulted any other member of your firm, or are you in private business?

Mr. FARRINGTON. No; I am quite sure she did not, because my partner was in the country at the time. Of course, the first time I ever heard of Slade & Slade was when they took the case from her.

Mr. CARLIN. We will excuse you now, sir.

(Witness excused.)

Mr. CARLIN. Mr. Sergeant at Arms, clear the court room. The committee will now go into executive session.

(Whereupon, at 3.10 o'clock p. m., the subcommittee went into executive session.)

EXHIBIT No. 30, MARCH 3, 1916.

BROOKLYN, N. Y., March 7, 1916.

HON. CHARLES C. CARLIN,
*Chairman Commissioner Investigating Committee,
Post Office Building, Borough of Manhattan, New York City.*

HONORABLE SIR: Enclosed herewith please find statement of our client, Earl M. Farrington, who testified before your honorable committee relating to the impeachment proceedings instituted against United States District Attorney Marshall.

At the time that Mr. Farrington testified, he promised to forward to you a copy of the statement which he had turned over to Mr. Marshall at the time of the interview had with Mr. Farrington, Mr. Marshall, and our Mr. Hertz. This statement is an exact copy of the statement turned over to Mr. Marshall.

Trusting this is satisfactory, we are,

Yours, very truly,

WEISMANN & HERTZ.

STATEMENT OF WHAT MR. FARRINGTON RECALLS OF THE INCIDENTS CONNECTED
WITH MISS TANZER'S EMPLOYMENT AND HER STATEMENT TO HIM REGARDING
HER SUIT.

Miss Tanzer came to us well recommended and worked in our factory in Fourteenth Street as a forelady of hand sewers, and we have always found her, from August 22, 1914, up to the time she left us, very efficient and attentive to her work in every respect. Her former employer informs us unsolicited that he also had found her very efficient and steady in her work over a period of three or four years in which she was in his employ. As one of the 150 of our employees, naturally we know nothing of her personally or of her parents or relatives, never having seen them.

In the latter part of February Mr. Farrington, in walking through the factory, noticed Miss Tanzer in a very agitated and nervous mood and not properly attending to her work, and upon inquiry as to the cause and why she was not doing her work properly, she begged leave to tell him the following story: Then, in our office, she said that the reason for her upset condition was that the day previous two 6-foot detectives who claimed they were from headquarters, had walked directly into the factory and demanded certain letters which had been written to her by a Mr. Osborne and, upon her refusal to give the letters, they had waited for her in the evening at the elevator entrance and made a similar demand, and she was afraid that they intended to do her harm and secure the letters in question. Her statement was corroborated by our treasurer who at the time called her into the office to see the detectives mentioned. Not knowing with whom she had to deal and upon the young lady's statement that the letters were in her muff and she was continually followed by the detectives, Mr. Farrington suggested putting them into the safe. Upon inquiry as to what the letters were about, Miss Tanzer asked Mr. Farrington to read them, which he hastily did in her presence and, as far as his memory goes, they were about like the three letters recently published in one of the morning issues. Then Miss Tanzer told the following story: That during the fall she had become acquainted with a man named Osborne who had called repeatedly at her home and taken her to supper and promised to marry her, and the fact also that he gave her some jewelry. Further, that after considerable courting, he had induced her to go one Sunday afternoon to Plainfield, N. J., and taken her to a hotel, and, in her own words, "had gotten the best of her at that time." He had continually called at her home and suddenly stopped his calls upon her. The last time she saw him she said was the night before Christmas on Fifty-ninth Street, opposite Bloomingdales, and subsequently she had discovered that he was not a western man, as he had claimed, but some one living in New York, and, because of the detectives demanding his letter and following her, she had decided to sue him for breach of promise. She claimed that she was sure she knew the man to be James W. Osborne in so far as she had sent one of her sister to a court in Brooklyn while he was trying a case, and that she herself had waited in the corridor one evening in a down-town office building and had recognized her former companion. Then, Mr. Farrington said to her: "Goodness, young girl, don't start any proceedings such as that. I might speak to a young lawyer friend of mine in Brooklyn, for its a serious thing, and you must surely know your man."

The matter passed out of the writer's mind, and the next he heard of the case was when Miss Tanzer came to him and said that she knew very well that the reason he took no interest in it was because of the fact that he could not afford to be mixed up in any personal affairs of his employees and that she had wandered about to half a dozen lawyers down town who had refused her case and that, eventually, some one with Max Steuer, or Mr. Steuer, had recommended here to Slade & Slade. The writer can not recall the names of the lawyers to whom Miss Tanzer said she went, but does recall that she said that all had refused the case on the ground that Mr. Osborne was too big a man to fight. Several times Miss Tanzer requested Mr. Farrington to see Messrs. Slade & Slade. Having no interest in the affair, he replied that there was no reason for his so doing if they understood her case. However, one evening, Mr. Slade called at our uptown office, presumably to find out if the young lady had been employed by us and what standing she had with our firm, and we only repeated to him the facts as before mentioned. From what Miss Tanzer said, evidently Slade & Slade had taken her case on a contingent basis, feeling that she was a defenseless girl and needed help. Certainly Slade & Slade never requested our assistance, for we had no idea of the merits of the case or never knew them or the parties personally involved. The next heard of the case was a frantic appeal from Slade & Slade, as their client had suddenly been arrested and thrown into jail, asking for someone to go on her bond for a few days or until they could bail her, to which Mr. Farrington replied that he did not want in any way to be connected with the case. However, indirectly, after telling Slade & Slade that they could absolutely depend upon us for nothing, we consulted our lawyers, who, through the Northwestern Surety Co., were instructed that at 11.55—5 minutes to 12—and at the last minute, if no one else appeared to bail the girl, that then, if the amount was for the limit we placed, they should bail her, for we did not wish to see her put in jail until we were assured that a crime had been committed. However, instructions were given that the young lady should be surrendered in four days, for while Slade & Slade did not know, or even Miss Tanzer, who had bailed her, yet Slade & Slade had said that they personally would bail her in some manner within the four-days' time limit.

At the expiration of these four days, Miss Tanzer was surrendered, and our money was returned to our representative by the Northwestern Surety Co. and the above statement contains the facts as we recall them up to the time of the girl's release.

ADDITIONAL STATEMENT OF MR. FARRINGTON, RECALLED TO HIM BY MR. HERTZ.

Mr. Hertz called to Mr. Farrington's attention that the premium on the bond, amounting to \$250, was paid by Mr. Farrington, and deducted from our collateral.

Mr. Farrington further recalled, after Mr. Hertz called his attention to the same, that he made copies of the letters for Miss Tanzer and that subsequently, when Miss Tanzer informed Mr. Farrington that she had Slade & Slade for her lawyers, she had asked for these copies, together with the originals, which were returned to her.

Mr. Farrington desires to state that there may be other small matters which he does not recall at this time, he being a very busy man, but, that if called to his attention, perhaps, he can recall the same; but that the inclosed statements are a full and complete statement of the facts as remembered by Mr. Farrington.

AFTER EXECUTIVE SESSION (4.10 P. M.).

TESTIMONY OF LEONARD R. HOLME—Continued.

Mr. CARLIN: Mr. Holme, the committee has directed me to order you to answer the question which was asked you. Mr. Stenographer, read the testimony of Mr. Holme.

(The entire previous testimony of Mr. Holme was read to the committee by the stenographer, in the hearing of the committee only.)

Mr. CARLIN. Mr. Holme, I hand you this article in the sixth column of page 4 of the New York Times, dated Friday, March 3, 1916. The article is headed "Marshall refuses Buchanan evidence." I now call your attention to this paragraph of the article:

It is the belief in the district attorney's office that the real aim of the Congress investigation is to put a stop to the criminal investigation of the pro-German partisans.

I ask you from whom you got that information?

Mr. HOLME. That information, sir, is a deduction. I have known at the time these proceedings were begun in Washington, it was before the indictment of Congressman Buchanan, that there had been a considerable amount of talk around this building as to their nature. I am down here practically every day of my life, and I meet with a great many men who are connected with the district attorney's office and who are in this building in various other regular capacities, and I based that paragraph entirely upon my knowledge of the general gossip around the building and the general feeling in the building.

Mr. CARLIN. Why did you not state that, instead of saying it is the belief in the district attorney's office?

Mr. HOLME. Well, sir, it comes to much the same thing, does it not; the district attorney's office is a large organization.

Mr. CARLIN. Is that your answer?

Mr. HOLME. Yes, sir.

Mr. CARLIN. Did you base that part of the article upon a conference held with H. Snowden Marshall, or any subordinate of his in the district attorney's office?

Mr. HOLME. I based that article on my general knowledge of the conditions surrounding this proceeding and the general opinion floating around the building.

Mr. CARLIN. You state that it is the general belief in the district attorney's office. Now, who in the district attorney's office expressed that belief?

Mr. HOLME. I don't think I could give you any definite names, because I have discussed this matter with a large number of different people at various times.

Mr. CARLIN. As a matter of fact, did anybody in the district attorney's office express that belief?

Mr. HOLME. Yes, sir.

Mr. CARLIN. Who?

Mr. HOLME. I can only remember a very few, and I respectfully decline, as a newspaper man, to express their opinions, which are often given to me in general conversation.

Mr. CARLIN. Was the belief expressed by Mr. Marshall or either of his assistants?

Mr. HOLME. I respectfully decline to answer, sir.

Mr. CARLIN. Mr. Stenographer, insert in the record this article which I hand you, and the date line of the paper.

Mr. GARD. I understand you to say, Mr. Holme, that this extract which has been read to you was written by you?

Mr. HOLME. Yes, sir.

Mr. GARD. And the extract is this:

It is the belief of the district attorney's office that the real aim of the congressional investigation is to put a stop to the criminal investigation of the pro-German partisans.

You wrote that?

Mr. HOLME. Yes, sir.

Mr. GARD. And I understand also that you decline and refuse to answer questions as to whether you obtained that information from anyone in the district attorney's office of the southern district of New York?

Mr. HOLME. Yes, sir.

Mr. GARD. You decline to answer that?

Mr. HOLME. Yes, sir.

Mr. CARLIN. Now, then, Mr. Holme, I am directed by the committee to order you to answer that. Do you still decline?

Mr. HOLME. I do, respectfully, sir.

Mr. CARLIN. Then, I am directed to say to you, for the record, that this committee determines you to be in contempt of the order of the committee and of the House of Representatives of the Congress of the United States, and that for the present you will be released from the custody of the marshal until the committee, if it sees proper, shall proceed in the manner prescribed by statute in such cases. We want to be kind to you. We have no desire to be harsh with you. We realize to some extent your embarrassment. We have a duty to discharge, and we think under the circumstances we will discharge it in this way and release you from the custody of the Sergeant at Arms of the House. Before doing so, I want to ask you, Are you an American citizen?

Mr. HOLME. No, sir.

Mr. CARLIN. You are a citizen of what country?

Mr. HOLME. England.

Mr. CARLIN. You are a British subject?

Mr. HOLME. Yes, sir.

Mr. CARLIN. The committee will excuse you for the present.

Mr. GARD. I desire to state for the information of all gentlemen of the press that the committee will follow the statutes of the United States in relation to further proceedings in this matter.

Mr. CARLIN. The committee stands adjourned until to-morrow morning at 10.30 o'clock.

(Adjourned to Saturday, March 4, 1916, at 10.30 a. m.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
New York, March 4, 1916.

The subcommittee met at 10.30 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson.

Hon. Frank Buchanan and Walter J. Walsh, as counsel.

Mr. CARLIN. The committee will come to order. Call Mr. Le Gendre, Mr. Clerk.

TESTIMONY OF CLARENCE F. LE GENDRE.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. WALSH. If the committee please, I would like to precede the questioning of this witness by reading into the record a portion of the

indictment against Messrs. Slade & Slade, that indictment being filed April 13, 1913. The clerk was asked to be here with the original, but in his absence I prefer to read portions of the copy which was served upon the accused. The portions from the indictment which I will read are the following:

And in and by arranging for the preparation of a false and misleading photograph, which was to be taken in such a manner as falsely to indicate that the said James W. Osborne and the said Rae Tanzer had therefore willingly been photographed together, which said false and misleading photograph the defendants intended to use as evidence in any judicial proceedings which might ensue in the district court for the southern district of New York, after the termination of the said hearing before said commissioner.

And under the heading of "Overt acts," the first paragraph, as follows:

And in pursuance of the said conspiracy and to effect the objects thereof the defendants, Maxwell Slade and David Slade, at their office at 200 Broadway, in the city, county, and southern district of New York, on the 23d of March, 1915, had a conversation with one Clarence Le Gendre.

Mr. Le Gendre, what is your occupation?

Mr. LE GENDRE. Photographer on the New York World.

Mr. WALSH. How long have you been photographer for the New York World?

Mr. LE GENDRE. Fourteen years.

Mr. WALSH. Do you remember the time of Rae Tanzer being indicted?

Mr. LE GENDRE. Yes, sir.

Mr. WALSH. And whether or not, on or about that time, you were assigned by the city editor to go to the office of Slade & Slade?

Mr. LE GENDRE. Yes, sir.

Mr. WALSH. What for?

Mr. LE GENDRE. To get a picture of Mr. Maxwell Slade and Mr. David Slade.

Mr. WALSH. Did you go there?

Mr. LE GENDRE. I did.

Mr. WALSH. Did you see those gentlemen?

Mr. LE GENDRE. I did.

Mr. WALSH. Did you have a conversation with them?

Mr. LE GENDRE. Yes.

Mr. WALSH. What took place there between you and the Messrs. Slade?

Mr. LE GENDRE. Well, I went up to the office and I saw Mr. David Slade, and I spoke to him and asked him about getting a picture of his brother and himself, and he didn't seem to want to have a picture taken. We got talking about the case up there, and he said to me, or I asked him—I said it was too bad that he did not have a photographer make a picture, or Rae Tanzer had not had some one make a picture of Mr. Osborne and her together, or whoever it was with her, and then there wouldn't have been any doubt as to who was with her. Just as I said that, Mr. Maxwell Slade came in the door, and I said—he said to me, "Would you make a picture like that"; and I had a camera under my coat. I told him yes; I could make that kind of a picture; I could make a picture of both of them together, if they were together, and he said—Mr. David Slade said, "I will tell you what I will do; if you can tell me or find out where Mr. Osborne goes at night, or wherever he is, if you can find

out," he says, "I am willing to have Rae Tanzer go to that place and go up and point him out, or sit down beside him and identify him as the man, and you can make that picture." So that was all that was said about that at that time. He offered to take her any place, no matter where it was.

Mr. WALSH. Did you then leave their office?

Mr. LE GENDRE. I left their office; yes, sir.

Mr. WALSH. You went where?

Mr. LE GENDRE. I went over to the district attorney's office.

Mr. WALSH. What was your purpose in going to the district attorney's office?

Mr. LE GENDRE. Well, I knew that they knew where Mr. Osborne was; so I thought I would go over and ask Mr. Wood if he would tell me where Mr. Osborne was that night, and he asked me why, and I told him that Mr. Slade was willing to have Rae Tanzer go up and point him out, as I said, and set down beside him, and that I wanted to get that picture.

Mr. WALSH. What did Mr. Wood say to you, if anything, when you told him that?

Mr. LE GENDRE. Why, he said, "Do you know what they want that picture for?" He says—before I could say anything, he says, "I suppose they want to use that picture," he said, "as though it was taken some time before," he says. Well, I knew that was not what they wanted it to be used for, but he kept on talking, and says, "You come in and see Mr. Marshall." We went in and saw Mr. Marshall. Mr. Marshall was in there with Mr. Hershenstein and Mr. Wood, and they related what I had told them about his willingness to bring Rae Tanzer over, and Mr. Marshall said to wait a few minutes and he would get Mr. Osborne, and they got Mr. Osborne, and then they sent for another man that he called a special investigator; that he said had investigated matters in the passport case and was a good evidence getter.

Mr. WALSH. What was his name, do you know?

Mr. LE GENDRE. Yes, sir; they brought him in and introduced him to Mr. Osborne and to myself as Mr. Baker.

Mr. WALSH. Now, relate the conversation you had there with Mr. Marshall about the photograph.

Mr. LE GENDRE. With Mr. Marshall?

Mr. WALSH. Yes.

Mr. LE GENDRE. Well, Mr. Marshall asked me to relate that again—the story about how Mr. Slade was willing to bring Rae Tanzer over any place Mr. Osborne would be, and Baker listened to it, and then when he suggested as to what they might want the photograph for—

Mr. WALSH. Who suggested that?

Mr. LE GENDRE. Why, Mr. Marshall. Mr. Wood had suggested before. I suppose he had told Mr. Marshall.

Mr. WALSH. Did Mr. Marshall say something in that connection?

Mr. LE GENDRE. Well, he seemed to think so himself—that that was what they wanted him for.

Mr. WALSH. Did he say anything to indicate that he did? Give us the language Mr. Marshall used.

Mr. CARLIN. Just tell us all that happened there.

Mr. LE GENDRE. He said that he would have this man Baker go with me and make arrangements, and have Mr. Osborne go, if he was willing, and if I got the photograph I was to take it and try to sell it.

Mr. WALSH. Who were you to sell it to?

Mr. LE GENDRE. Slade & Slade.

Mr. WALSH. Who made the suggestion to you that you were to get the photograph and sell it to Slade & Slade?

Mr. LE GENDRE. Mr. Marshall made the suggestion that they were to offer me money for it—if they offered me money for it, to ask a good price. He did not exactly say to sell it, but he says that if they offered me money for it, get a good price for it.

Mr. WALSH. Go on and relate—

Mr. LE GENDRE. After they told me anyway about this and this expert evidence getter, Baker, he says, "Why, that's all rot," he says, "they would not try to do anything about that; nobody would be crazy enough; something would happen if you would go and make a picture like that in a public place, and there would be sure to be a row." Baker said he did not think the thing was plausible; that I could not get the picture. Then Mr. Osborne did not seem to like the idea of going up there, so he said to me, "Can't you make a composite picture?"

Mr. WALSH. Mr. Osborne said that?

Mr. LE GENDRE. Mr. Osborne said that.

Mr. WALSH. Was Mr. Marshall present?

Mr. LE GENDRE. Yes.

Mr. WALSH. Go on and tell us what took place.

Mr. LE GENDRE. "Can't you make a composite picture?" I knew he did not mean that. He meant a picture of Rae Tanzer and him together; just made through a photographic process; not exactly a composite. A composite is one picture on top of another, but two printed together on one piece of paper, as though they were taken together; and he says, "Can't you make a picture like that?" And I said I could, and I think—I was to make a picture like that and bring it around.

Mr. CARLIN. Let us get that full conversation out as to what happened in this case.

Mr. LE GENDRE. I can not remember, word for word.

Mr. CARLIN. After you told him you could make the picture what happened?

Mr. LE GENDRE. I understood that I was to make the picture, because he asked me could I make that kind of a picture. Mr. Osborne asked me that himself, and then he would not have to go up there and I would not have to make the flashlight.

Mr. CARLIN. Did he ask you to make the picture?

Mr. LE GENDRE. I told him I could make a picture, and offered to make one and bring it in.

Mr. CARLIN. What did he say to the offer?

Mr. LE GENDRE. Mr. Marshall said—told me to go up and call up the Slades that night and tell them that I was making arrangements about getting Mr. Osborne to go up and pose—find out where Mr. Osborne was and try to make arrangements with Slade to bring Rae Tanzer there, and I went over there and called him up at 5 o'clock that night and made an arrangement to see him in the morning.

That is all the conversation happened in there at that time with Mr. Marshall.

Mr. CARLIN. Well, did you make the picture?

Mr. LE GENDRE. I made the picture; yes.

Mr. CARLIN. What did you do with it after you made it?

Mr. LE GENDRE. I gave it to Mr. Marshall.

Mr. WALSH. What did Mr. Marshall do with the picture when he got it?

Mr. LE GENDRE. He took the picture, and he looked at it, and he said it was the most dangerous thing that he had ever seen. You could not tell but what they were photographed together. It was not a picture pasted together or anything like that. I put it in an enlargement machine and printed the two of them on one piece of paper—a photograph I had of Rae Tanzer.

Mr. CARLIN. Have you a copy of that?

Mr. LE GENDRE. No; it is impossible to have two pictures, for both of them have to be put in at different times. He wrote that on the back, and he said he was going to keep that to show it could be done in the photographic art business. He says it was an awful dangerous thing, and he kept it.

Mr. WALSH. What did he write on the back?

Mr. LE GENDRE. I don't know just what he wrote. He told me that what he was going to write, that he had gotten it from me, what it was, the date he had gotten it, and how it was made. That is what he told me he was going to write on the back.

Mr. CARLIN. Did you offer the picture to the Slades?

Mr. LE GENDRE. No; I never brought that to the Slades. I knew there was no use bringing that over there. I did bring a picture to Slade of Mr. Osborne. He had asked me to get a full-faced picture of Mr. Osborne. He said the pictures he had were side-face pictures, profile, and he asked me if I could get him a full-faced picture. I told him I had one, and I did bring him over a small picture the next morning, but I did not show him this at all. He never asked me for it.

Mr. CARLIN. Did you explain to the Slades that you could not get the picture they wanted you to get?

Mr. LE GENDRE. No; I went up there that morning to tell him I could not get it that night. They were all excited over there. I think they had Safford over there that morning, and I only saw one Mr. Slade, and I was to see him again, and that is where the matter dropped.

Mr. CARLIN. You never saw him any more?

Mr. LE GENDRE. I never saw him any more.

Mr. WALSH. Did Mr. Slade ever ask you to get any picture for them?

Mr. LE GENDRE. No.

Mr. WALSH. Did they ever ask you or suggest to you the taking of this picture that you subsequently made up of Mr. Osborne and Miss Tanzer together?

Mr. LE GENDRE. No.

Mr. WALSH. Did they ever see that picture?

Mr. LE GENDRE. No.

Mr. WALSH. You never called it to their attention?

Mr. LE GENDRE. No; I never called it to their attention, except I think I had——

Mr. WALSH. Did they ever at any time suggest to you an improper method for the making of a photograph of Miss Tanzer and Mr. Osborne?

Mr. LE GENDRE. No.

Mr. WALSH. Is it a fact that as a newspaper man you desired to have Miss Tanzer point out Mr. Osborne, and for that purpose you wanted to get a photograph?

Mr. LE GENDRE. At that time she had not identified James W. Osborne. She had not been able to see him, as I remember it.

Mr. WALSH. You wanted to get a picture of her identifying Osborne, for your paper?

Mr. LE GENDRE. That is all I wanted, and if she could identify him, to do so, that is all. I would not have given it to Mr. Marshall or Mr. Slade or anybody else. I would have kept the picture for myself, that is what I wanted it for.

Mr. WALSH. Did either of the Messrs. Slade at any time, either directly or indirectly, ask you to make a picture of Rae Tanzer and Mr. Osborne together?

Mr. LE GENDRE. No.

Mr. CARLIN. Have you not just testified that he said——

Mr. LE GENDRE. He said he would be willing to take the girl over and I could get the picture. He did not say, "You can get that picture for me."

Mr. WALSH. Were you subsequently taken before the grand jury?

Mr. LE GENDRE. After that, yes; I was brought before the grand jury a while after.

Mr. WALSH. Were you inquired of there about this picture that you made up—this so-called composite picture?

Mr. LE GENDRE. No; I was before another grand jury. I was before two grand juries. The second one, I explained that to—the second grand jury.

Mr. WALSH. Now, this was after the Slades had been indicted?

Mr. LE GENDRE. Yes; after they were indicted, after this other trial, I was brought before another grand jury.

Mr. WALSH. Now, the first grand jury you were brought before, to what extent were you questioned?

Mr. LE GENDRE. I just answered Mr. Marshall's questions, I think it was; yes, Mr. Marshall.

Mr. CARLIN. Did not give your testimony before the grand jury.

Mr. WALSH. You were questioned by Mr. Marshall himself, were you?

Mr. LE GENDRE. Yes.

Mr. WALSH. How soon after that were you called before another grand jury?

Mr. LE GENDRE. Well, it was some time in July, I think. On July the 19th; it was quite a while after that.

Mr. WALSH. Was that after the trial of the Slades?

Mr. LE GENDRE. After the trial.

Mr. WALSH. At any time were you asked to change the statement that you made to Mr. Marshall, or the district attorney's office?

Mr. LE GENDRE. That is part of the grand jury stuff.

Mr. CARLIN. We can not permit you to ask the witness as to what he testified to before the grand jury.

Mr. WALSH. That is not the question. He was asked if he was requested to change his testimony.

Mr. CARLIN. You can answer that.

Mr. LE GENDRE. I was asked if I wished to change my testimony.

Mr. WALSH. If you wished to?

Mr. LE GENDRE. If I wished to.

Mr. WALSH. Was there any change in your statement suggested to you by anybody connected with the United States district attorney's office?

Mr. LE GENDRE. No.

Mr. WALSH. No change at all. Did you ever make a statement about this matter, concerning the photograph?

Mr. LE GENDRE. I don't think I did; no.

Mr. WALSH. Did you make a statement in writing for your paper, the New York World?

Mr. LE GENDRE. I dictated a statement.

Mr. WALSH. You dictated a statement?

Mr. LE GENDRE. Yes.

Mr. WALSH. Did you subsequently dictate a statement in Mr. Slade's office?

Mr. LE GENDRE. Yes.

Mr. WALSH (handing paper to witness). I show you this paper and ask you if that contains a true statement of the dictation that you made in Mr. Slade's office?

Mr. LE GENDRE. Yes; that is it.

Mr. WALSH. Can I leave this with the clerk of the committee?

Mr. GARD. Did you show him that paper?

Mr. WALSH. He says he made this statement.

Mr. LE GENDRE. That is the same statement I made.

Mr. GARD. Is there any difference between that statement and the one he has made here?

Mr. LE GENDRE. There may be in the wording.

Mr. WALSH. More in detail than the statement he has testified to.

Mr. CARLIN. Is there any difference in his statement? If there is, point it out to the witness now.

Mr. GARD. Does that statement contain any suggestion or language that said he was asked to make a change in this picture by the district attorney's office?

Mr. WALSH. Yes; there is this statement here.

Mr. CARLIN. Read it to him.

Mr. WALSH. Is this statement correct, in speaking of what occurred in connection with changing your testimony: "They read over the testimony and wanted to know whether there was any testimony in that that I wanted to change, and I told them no, that I wanted to change nothing, and they then asked me as to whether Mr. Slade said to me 'And you can get that photograph,' and whether he said 'for me,' but I told them that the 'you' meant for me, for my own use." Meaning your own use? That statement is correct, is it not?

Mr. LE GENDRE. Yes.

Mr. GARD. What I want to know, you said something about nobody asking you to change the picture or make any alteration in the picture. You said nobody did make any such suggested?

Mr. LE GENDRE. No.

Mr. WALSH. No; there is nothing in that statement along that line.

Mr. GARD. All right.

Mr. WALSH. That is all of this witness.

Mr. GARD. One thing I would like a little more information about from your testimony. I think that you said that Mr. Marshall, the United States district attorney, asked you to either call up the Slades or go to see the Slades about this picture that you had. What was that?

Mr. LE GENDRE. No; I did not have the picture at that time. I was going to make that picture that evening. He asked me to call up the Slades that night and have this man Baker get a record of the telephone calls, and where I phoned from, to make an engagement for them the next morning.

Mr. GARD. To make an engagement with Slades the next morning?

Mr. LE GENDRE. Yes; I had promised the Slades I would be there the next morning and tell them if I could find out where Jim Osborne was that night, see, and so he told me to take this man Baker and have him go along with me and make a record where I made the call.

Mr. GARD. Did Baker go with you or did you make the call?

Mr. LE GENDRE. I made the call myself and reported it to Baker.

Mr. GARD. Baker was an investigator in the employ of the district attorney's office, was he—connected with the office?

Mr. LE GENDRE. I think he is in the employ of the Federal offices somewhere. He is under Ossler over there—or whatever his name is—in the Park Row Building. I think it is the Treasury Department.

Mr. GARD. He was helping out on this particular matter?

Mr. LE GENDRE. He was called in by Marshall.

Mr. GARD. He was acting with Mr. Marshall, the district attorney, in the matter of securing evidence—supposed to secure evidence against Slade; was that the object of it?

Mr. LE GENDRE. Yes.

Mr. NELSON. In other words, lay a trap to catch him using fake photographs?

Mr. LE GENDRE. Yes; if Slades had agreed to buy this thing or anything like that, I was willing to let Mr. Marshall know about it, if they had proposed any such thing and he was to get the evidence, that's all. But this Baker, he brought him here as to what he thought about what Slade had said to me, don't you know, and when he heard about it, why, he said, "Why, that's all bosh." He says, "They would never fall for anything like that, buying a picture and say it was made six months ago and it was only made the other night in a public place," so that is what made it seem funny to me, after he saying that, although Mr. Marshall may have, as he did I presume—he thought probably that that was what was wanted at first, but after his own expert opinion which was before I ever went before the grand jury—

Mr. GARD. The original idea as expressed by Mr. Marshall—

Mr. LE GENDRE. He took an inference from what I said, that they wanted me to make the picture for them.

Mr. GARD. No; I say the original idea as expressed by Mr. Marshall was to use your services in connection with Mr. Baker, this investigator, to entrap Slade?

Mr. LE GENDRE. Yes, sir; if Slade had done anything.

Mr. CARLIN. Did you know Slade had been indicated in the language which has just been read to you, for having a picture of this sort made?

Mr. LE GENDRE. No; I was very much surprised when I read in the paper about how the indictment read as to the picture. As I saw him there it did not seem to me as though it coincided with the way I testified at all, because there would not have been a fake picture.

Mr. CARLIN. The truth is that instead of making the picture for Slade you made it for Mr. Marshall?

Mr. LE GENDRE. No; I made it at the suggestion of Mr. Osborne.

Mr. CARLIN. Who paid you for it?

Mr. LE GENDRE. Nobody paid me.

Mr. NELSON. But Mr. Marshall knew that you were about to make the picture?

Mr. LE GENDRE. Why, he knew I was going to make that picture yes; because Mr. Osborne had suggested it.

Mr. NELSON. In his presence?

Mr. LE GENDRE. He asked me could I make it.

Mr. NELSON. That is, Mr. Osborne suggested it in the presence of Mr. Marshall?

Mr. LE GENDRE. In the presence of Mr. Marshall, Mr. Wood, and Mr. Hershenstein; that was to save him from going up there.

Mr. CARLIN. Who did you deliver the picture to?

Mr. LE GENDRE. To Mr. Wood, and Mr. Wood took it and walked into Mr. Marshall's office with it in his hand.

Mr. CARLIN. Did you tell Mr. Wood Mr. Slade had not been offered a copy of this picture?

Mr. LE GENDRE. Why, sure.

Mr. CARLIN. And Mr. Wood knew that this was the only copy?

Mr. LE GENDRE. That was the only copy. I brought it in there. The way it read in the papers as though it was a picture, as I told you, by photographic art. If he brought Rae Tanzer up there and had her pick out Mr. Osborne in a public place, and I made a picture of the two of them together—it is ridiculous; there would be a row right off the reel.

Mr. CARLIN. Why did you go to the Slades and suggest to them to have this picture made?

Mr. LE GENDRE. I did not suggest it.

Mr. CARLIN. You went to their office?

Mr. LE GENDRE. I went to their office to get a picture of Mr. Maxwell Slade and Mr. David Slade.

Mr. CARLIN. Who made the suggestion about it?

Mr. LE GENDRE. I made the suggestion to him. He talked about Mr. Osborne, and everything, and said they did not know who this party—not that they didn't know—they were sure it was Jim Osborne. I said it was too bad they hadn't had a picture taken of the two, but she might have had a picture of the two of them made at the beach or some place, and then they could recognize it, and Mr.

Maxwell Slade—I don't know whether he heard all of the remarks—came in the door, and he asked me could I make a picture like that. He had not seen my camera—I had it under my coat—and I told him I could. Then Mr. David Slade said he was willing to have her go up wherever Mr. Osborne was.

Mr. CARLIN. The idea that you intended to leave with the Slades was that you would get the picture for publication?

Mr. LE GENDRE. Yes; and that is the idea they had, as he told me.

Mr. CARLIN. You would get the picture and publish it in the New York World?

Mr. LE GENDRE. Sure; her identifying Osborne.

Mr. NELSON. But both of you had a perfectly legitimate object in view, that you wanted to publish a picture of Rae Tanzer actually identifying—

Mr. LE GENDRE. Yes; not any pasted picture or anything. I was going to make that photograph.

Mr. NELSON. The plaintiff going to the defendant and saying "You are the man"?

Mr. LE GENDRE. Yes; "You are the man," and I get a picture. There was no suggestion of any pasted-up stuff or anything at all.

Mr. CARLIN. I thought you suggested you would have her sit down beside him.

Mr. LE GENDRE. She could go in and point him out and sit down beside him, any way at all, as long as I would get it. It could not possibly be taken as a picture taken before that, because I think Slade himself suggested there would be a row sure—she would scratch his eyes out, or something of that sort.

Mr. WALSH. Mr. Le Gendre, did either Mr. Maxwell Slade or David Slade at any time arrange for the preparation of a false and misleading photograph, which was to be taken in such a manner as falsely to indicate that James W. Osborne and Rae Tanzer had willingly been photographed together?

Mr. LE GENDRE. No.

Mr. WALSH. Now, Mr. Le Gendre, at any time did you have anything to do with a man impersonating one Oliver Osborne and calling at the district attorney's office?

Mr. LE GENDRE. Well, I was around here looking for Oliver Osborne for about two weeks. I had a fixed post out here, out in front of Mr. Marshall's office, waiting for Oliver. Every day they would say he would be here; they had him or knew where he was, and all that.

Mr. WALSH. Who would say that?

Mr. LE GENDRE. Be given out from the district attorney's office.

Mr. WALSH. Did Mr. Marshall ever tell you he would be here?

Mr. LE GENDRE. Yes; he said that; he said they had a line on him and had a pretty good chance of getting him that day, and every day he was to come there.

Mr. WALSH. Go on and tell the committee what happened after you got tired of waiting for him to show up.

Mr. LE GENDRE. One Saturday afternoon he was to be there at 4 o'clock. I waited till 4 or after 4; then I had a friend of mine who kind of resembled Oliver, as he was described to us—tall and big hat and looked like a Westerner. I told him to come in here, and he came in, and all of the newspaper men were seated inside of that

inside office of Mr. Marshall's and the photographers were outside. I told him to walk in there and not to say anything, just to walk in and look around, and probably Mr. Marshall's secretary would come up to him and ask what he wanted, and not to tell him, just ask him if those were newspaper men there, and then turn around and walk out. So he did go in and he asked the questions, and he turned around and walked out. Mr. Marshall's secretary and all of the bunch of fellows from around the building here and the photographers came and looked him all over and photographed him and all that kind of stuff. They chased him for about an hour and a half. At last he came up to the World Building. In the meantime I had come back here. It was about 5 o'clock then, and Mr. Marshall came out of his office, and they all got around him and asked him about this man, and described him, too, and everything, and Mr. Marshall said, "Now, you see," he says, "by hanging around here you have chased him away again." So I did not hang around there any more looking for "Oliver."

Mr. GARD. Did this incident occur on the 1st of April?

Mr. LE GENDRE. No; but that is the last I heard of Oliver, so I thought if they wanted him very badly they would have arrested this fellow.

Mr. CARLIN. Did you ever get a picture of Oliver?

Mr. LE GENDRE. No; I did not. I am looking for him yet.

Mr. CARLIN. You had a mental picture of him?

Mr. LE GENDRE. Yes; he had been described pretty well. I had the first description of him when I went down to Plainfield.

Mr. NELSON. Who described him to you.

Mr. LE GENDRE. The description was in the paper.

Mr. NELSON. Was he described by anyone in the district attorney's office?

Mr. LE GENDRE. He had been described by Mr. Osborne. At first, I think he said he was a plumber, or something of that kind, from Boston.

Mr. NELSON. Did Mr. Osborne describe him in your presence?

Mr. LE GENDRE. Not in my presence, but he described him to some one. His description had been in the paper, where he had gone up to see Mrs. Osborne, and that is where they got the description of him; that he looked like a Westerner, with a big hat, etc.

Mr. WALSH. Was any effort made to detain him in the district attorney's office?

Mr. LE GENDRE. No effort made at all. Nobody paid any attention to him, except the newspaper men.

Mr. WALSH. Was he questioned at all in the district attorney's office?

Mr. LE GENDRE. No.

Mr. WALSH. You went down to Plainfield, you said; what did you go down there for?

Mr. LE GENDRE. That was when this story first came out. That was on Sunday they sent me down to get an interview from Mr. Kitchin, the hotelkeeper, and try to get a copy or picture of the register.

Mr. WALSH. Did you have a talk with Mr. Kitchin there?

Mr. LE GENDRE. Yes; I had a talk with him.

Mr. WALSH. What did he say to you?

Mr. LE GENDRE. He told me I would have to see Mr. Safford; that he did not know this man, Mr. Osborne; that he said he had seen him, but he would not like to describe him, as he did not remember him. He said Safford did all the talking to him.

Mr. WALSH. Did Mr. Kitchin afterwards change that statement, to your knowledge?

Mr. LE GENDRE. Well, he said that he recognized him afterwards. He told me he did not; that he would not be able to, and he certainly would like to. I asked him if he looked like a plumber, and he said, "If he is a plumber, we are all plumbers." That was the description given in the paper the day before—that he was a plumber and came from Boston.

Mr. WALSH. He afterwards said he would be able to identify him?

Mr. LE GENDRE. He did seem to identify him as not being the man.

Mr. WALSH. That is, he identified James W. Osborne, and said he was not the man?

Mr. LE GENDRE. Yes.

Mr. WALSH. That is all, Mr. Le Gendre.

Mr. CARLIN. You may stand aside; you are excused.

(Witness excused.)

Mr. GARD. Is Mr. Whitney in the court room?

TESTIMONY OF MR. CARL E. WHITNEY—Continued.

Mr. WHITNEY. My address is No. 15 William Street, New York.

Mr. CARLIN. Mr. Whitney, there were some matters that you desired to correct or amplify with reference to your testimony. First, tell the committee what they are, please.

Mr. WHITNEY. That I desire to correct?

Mr. CARLIN. Yes; or to amplify.

Mr. NELSON. Or any additional statement.

Mr. GARD. Something you desired to say in addition to what Mr. Wise said.

Mr. WHITNEY. No; Mr. Chairman, I did not have anything. I do not think I have anything to add to my statement. Mr. Chairman.

Mr. CARLIN. All right, sir.

Mr. NELSON. Was there anything pertaining to the case that you had in mind, that was not disclosed, and that you could have informed us about if we had interrogated you?

Mr. WHITNEY. No; I think that Mr. Wise's statement covered that case very fully, sir.

Mr. NELSON. Did you state to anyone that you could have disclosed more evidence if you had been asked?

Mr. WHITNEY. No.

Mr. CARLIN. Any questions, Mr. Walsh?

Mr. WALSH. Yes, Mr. Chairman, I would like to ask Mr. Whitney a question. Mr. Whitney, you have been practicing here a number of years, have you?

Mr. WHITNEY. In New York City?

Mr. WALSH. Yes.

Mr. WHITNEY. Yes, sir; 10 years.

Mr. WALSH. Do I understand that you were counsel for one David Lamar?

Mr. WHITNEY. I was.

Mr. WALSH. And was that in this action that was started against him by the United States—this criminal action?

Mr. WHITNEY. There were two criminal actions, sir.

Mr. WALSH. Two criminal actions?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Were you his counsel in both actions?

Mr. WHITNEY. I was.

Mr. WALSH. Now, as his counsel did you have any talk or conference about that case with Mr. Marshall at any time?

Mr. WHITNEY. Which? May I say that there was a case which was tried before Judge Sessions, for alleged representation of Mr. Palmer, and then there was a case where Mr. Lamar was jointly indicted with Mr. Buchanan, Rintelen, Fowler, and others. To which one of those cases is counsel referring.

Mr. WALSH. We will take the first case, and tell us whether or not you had any conference with Mr. Marshall concerning that case or after the trial of that case.

Mr. WHITNEY. In connection with making up the record on appeal and matters of that kind in connection with the appeal I conferred with Mr. Marshall; yes.

Mr. WALSH. At any time did Mr. Marshall ever say anything to you or discuss with you the topic of David Lamar becoming a witness for the Government?

Mr. CARLIN. If you feel that that question is privileged—

Mr. WHITNEY (interposing). I do, Mr. Chairman.

Mr. CARLIN. Then the witness need not answer it. You need not answer that question.

Mr. WHITNEY. Thank you.

Mr. WALSH. This statement, as I understand it, Mr. Whitney, was a statement by Mr. Marshall to you and not in your client's presence?

Mr. GARD. The committee thinks that you should be the judge, and if you recognize the conversation and if you deem it to have been made to you in your confidential capacity we would not ask you to disclose it.

Mr. WHITNEY. Well, as between Mr. Marshall and myself, as an attorney, I recognize that there would be no confidential communication.

Mr. CARLIN. But as to the confidential communication with reference to your client's matters—

Mr. WHITNEY (interposing). Yes; I think it might be, unless waived by the man who was then my client. He is no longer my client, but the privilege still, I believe, is mine.

Mr. CARLIN. You need not answer the question, then.

Mr. WHITNEY. Thank you, sir.

Mr. WALSH. I want to call the witness's attention to the fact that I did not ask him to discuss anything concerning his doings with his own client, but I wanted him merely to discuss that proposition which he has already told the committee that he himself does not consider privileged, to wit, the talk with Mr. Marshall.

Mr. CARLIN. Any matter that you do not consider privileged you may testify about. The committee wants to make it plain to you that it leaves that to your conscience as to what you may consider privileged.

Mr. WHITNEY. The conversation which I had with Mr. Marshall, to which counsel is referring, was with regard to the case in which Messrs. Buchanan, Rintelen, Fowler, Martin, and Schulteis are now under indictment.

Mr. GARD. And Lamar?

Mr. WHITNEY. And Lamar; yes, sir; and that conversation was reported by me to my client, so that if I give it, in my opinion, I would be violating a confidential communication unless waived by the client.

Mr. CARLIN. If you feel that way about it—Mr. Walsh seemed to think you did not regard it as privileged, but as long as you do regard it as privileged the committee will respect that.

Mr. WHITNEY. My then client could waive that privilege.

Mr. CARLIN. But he has not done that?

Mr. GARD. Did you say he has or has not?

Mr. WHITNEY. He has not; not to my knowledge.

Mr. NELSON. Has this gentleman already testified to this matter?

Mr. WALSH. Mr. Whitney?

Mr. NELSON. Yes.

Mr. WALSH. Oh, no.

Mr. HILL. Would you be willing to give such testimony in case your previous client should waive any such relation as attorney and client between you and him at the call of the committee?

Mr. WHITNEY. Not merely qualified by the word "willing." I would give it.

Mr. NELSON. You would give anything where the privilege is waived?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Mr. Whitney, would you consider it a waiver sufficient to tell the committee what you know if I told you that the source of my information was David Lamar?

Mr. CARLIN. The committee will enforce the rule, as long as counsel raises the question of privilege. Even if the counsel were disposed to testify about a privileged matter, the committee would not permit him to do so. No counsel has the right, even if willing to do so, to testify about a matter that he himself states is privileged; and where he himself does not avail himself of the privilege any court may compel him to recognize the privilege, and we would not permit him to testify to privileged matter.

Mr. WALSH. I hope the committee will not understand that I wanted him to violate that at all.

Mr. CARLIN. Not at all.

Mr. GARD. He said that it was not privileged, in answer to my question—that it was not privileged between himself and Mr. Marshall, as attorneys, but he felt it was privileged, since it related to a man whom he then represented as a lawyer.

Mr. WHITNEY. That is my position.

Mr. GARD. I think the witness is very fair, and he said he would testify if the waiver of confidential relations were made to him by his then client, Mr. Lamar.

Mr. WALSH. Would you insist that that waiver be in writing, Mr. Whitney?

Mr. WHITNEY. No; it does not have to be in writing.

Mr. CARLIN. What does your statute provide here in New York? I think it is section 839, with reference to privileged communications?

Mr. WHITNEY. Well, I read it this morning, Mr. Chairman, but my idea is that it gives an attorney a privilege as to confidential communications between himself and his client, but that the client can waive them.

Mr. CARLIN. The recognized rule is that, even if you were disposed to testify to privileged matter, that the court can seal your lips.

Mr. WHITNEY. Yes; but you do not understand that I am disposed to violate it?

Mr. NELSON. Oh, no.

Mr. CARLIN. No; but I am speaking of the recognized rule.

Mr. WHITNEY. Yes; and I think that is the law here.

Mr. CARLIN. You have a statute here in New York on the subject, but I do not know just what it is.

Mr. WHITNEY. Yes.

Mr. CARLIN. You say you read it this morning?

Mr. WHITNEY. Yes.

Mr. CARLIN. Does it provide for waivers to be in writing?

Mr. WHITNEY. No, sir.

Mr. CARLIN. It does not?

Mr. WHITNEY. No, sir.

Mr. CARLIN. Mr. Walsh, have you any other questions?

Mr. WALSH. No, sir.

Mr. CARLIN. You may stand aside.

(Witness excused.)

Mr. RUSSELL. Is Mr. Wadsworth in the room?

Mr. CARLIN. Is Mr. Wadsworth in the room?

(No response.)

Mr. CARLIN. Is Mr. Stafford in the room?

(No response.)

Mr. RUSSELL. Mr. Poltrowitz?

TESTIMONY OF MR. MYER PALTROWITZ.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. CARLIN. Mr. Walsh, you may proceed.

Mr. WALSH. Your occupation, Mr. Paltrowitz, is what?

Mr. PALTROWITZ. Merchant.

Mr. WALSH. And you are doing business under your own name?

Mr. PALTROWITZ. A corporation name.

Mr. WALSH. A corporation?

Mr. PALTROWITZ. Yes.

Mr. WALSH. What is that corporation?

Mr. PALTROWITZ. Pipe and contractors' supply company.

Mr. WALSH. Your plant is situated here in New York?

Mr. PALTROWITZ. Yes, sir; two plants.

Mr. WALSH. Do you know Frank D. Safford?

Mr. PALTROWITZ. I do.

Mr. WALSH. At any time did anybody solicit employment for him with you?

Mr. PALTROWITZ. The conversation come up one day in my attorney's office. I was about to make some changes——

Mr. CARLIN. Who is your attorney?

Mr. PALTROWITZ. Slade & Slade. And in the conversation I told them that I intended changing around somewhat and enlarging, and I was going to put on some extra men; that I was going to inventory; something that I had not done yet, since I had been in business. They asked me if I could make use of a man; that he had a man looking for a job where the work would not be very heavy. I told him if the man was an intelligent man, and the salary was not very high, I might hire him. He says he had a gentleman by the name of Safford. I did not know who Safford was. I told him to send him down. I believe this was on a Friday the appointment was made, and Mr. Safford was to be down at my place on Monday morning. Mr. Safford did not show up at any time after that. Sometime—I believe it was either Monday or Tuesday—a gentleman come in looking for me, and I was not in at that time, and he left word that he would be back later on. In the afternoon, a gentleman come in and asked for me, and I was there, and he said, "I would like to speak to you privately." I walked out of the office into the store. He said, "Is your name Myer Paltrowitz?" I says, "Yes." He says, "Do you know anybody by the name of Safford?" or Stafford. I says, "No." "Sure?" "No." He says, "Have you heard that name?" I says, "I have heard a name similar, but I don't know the man. The man was to report to work, I think, yesterday." Well, he says, "Did you hire him?" I says, "No." Well, he says, "We have a man arrested. I am a post-office inspector, and my name is Swayne," and he threw open his coat and showed me his badge. He says "You did hire that man" or something to that effect. I says, "I did not, and I don't know him." He says, "I want all the information you have got." I says, "I haven't any other information." Well, he says, "If you don't give me all the information you have got, I will have you before the grand jury." I says, "Go as far as you like." I says, "I would not tell you anything different than I would tell the grand jury." Well, he left, I think the following day——

Mr. GARD (interposing). What was his name, did you say?

Mr. PALTROWITZ. Swayne.

Mr. GARD. Swayne?

Mr. PALTROWITZ. Swayne. S-w-a-y-n-e, I think it is, or S-w-a-i-n. The following day, I believe it was—I think it was the following day, or a short time after, anyhow, I received a subpoena to appear. That subpoena was before the grand jury, but, to the best of my recollection, there was a little rubber stamp there that notified me to call at room 208. I went over to the room, and I showed the subpoena. "You go upstairs," or "Go to the grand-jury room," directing me where it was, "and you ask for Mr. Hershenstein." I went up to the grand-jury room, and after hanging around there for about an hour or so, some gentleman in a blue suit came out, and says, "Is your name Paltrowitz?" "Yes," I says, "Who are you?" He says, "My name is Hershenstein," and he walked me off, and he said, "What do you know about this case?" I says, "I don't know much of anything about it." He says, "Didn't you know a man by the name of Safford?" and I says, "No; I don't know him; I never

met him; but Safford was to report for work if he was satisfactory. He was to come down Monday, but he never showed up." He says, "Are you sure he was to report for work?" I says, "No; he was not to report for work; he was to report to see whether he was satisfactory or not." He says, "Who was to pay him?" I says, "Well, if anybody works for me, why, naturally, I pay him, or the corporation pays him." He says, "Wasn't it, as a matter of fact, that you were simply going to put him on your pay roll, and that Slade & Slade were going to pay you back for this?" I looked at him, and I says, "No, Mr. Hershenstein; that is not the case. If this man was satisfactory to me, I was to pay him myself, the same as we do all the rest of the employees." Now, he says to me, in a sort of confidential, impressive manner, "Now, don't you know," he says, "that Slade & Slade was to repay you for the money that you were going to give him; that you were only going to put him on the pay roll as a matter of form, to keep him there?" I says, "Look here, Mr. Hershenstein, if you know more about this case than I do, why don't you go before the grand jury? What the hell do you want to take me here for?" Well, he tried to talk to me, and from his language and from his mannerisms, and one thing and another, I took it for granted that he wanted me absolutely to make the statement that I was only going to have him as a dummy on the pay roll. I says, "It is not so." Subsequently, quite some time after, I employed Safford, and he was in my employ, I think, about seven or eight months. I found him absolutely honorable, dependable, and a man of high intelligence; and I am sorry I haven't got him with me to-day. He left me for a much better position.

Mr. NELSON. What work did you give him?

Mr. PALTROWITZ. Most of the people that I employ are Russians and Poles. They are illiterate, hard-working people, and he took charge of the men, and simply changed our whole system over there, as to stock, so that we could take stock. He changed the place so that you could put your hand on any item and take it from anywhere, whether it was a small, little tool or a big machine; systematized the whole building—three stories.

Mr. NELSON. What is your business?

Mr. PALTROWITZ. Pipe and machinery—contractors' machinery.

Mr. NELSON. How much business do you do?

Mr. PALTROWITZ. Oh, in the neighborhood of \$100,000.

Mr. NELSON. How many men do you employ?

Mr. PALTROWITZ. I believe at the present time I have got something like 13 or 14 on the pay roll, all told.

Mr. NELSON. You gave him a sort of foreman's job, did you?

Mr. PALTROWITZ. I did; he was rather an elderly man, and could not do any hard work, and I became very much impressed with him after I had him in my employ.

Mr. WALSH. Did you ever trust him with any funds?

Mr. PALTROWITZ. Why, I have sent him to the bank with moneys, as high as seventeen and eighteen hundred dollars. I found the man absolutely honest.

Mr. WALSH. Besides your talk with Mr. Hershenstein in this matter, did you talk with Mr. Wood?

Mr. PALTROWITZ. Why, yes; I was subsequently brought in to the grand jury at that time, and I testified as to what had taken place

as between the Slades, in reference to hiring this Mr. Safford, and I was excused. Some time after that I received a subpoena in the case of The People against Safford, to report at 2.30, I believe, on April 28. I reported over here.

I was not reached that day. The court adjourned until the morning of the 29th. I had made an appointment with the gentleman from Utica, who had made an appointment to meet me at the Pennsylvania Depot the night of the 28th.

Mr. CARLIN. Just answer the question. Did you have any conversation with Mr. Wood on this matter?

Mr. PALTROWITZ. I am coming to that.

Mr. CARLIN. Well, get to it.

Mr. PALTROWITZ. I went to Mr. Wood that day, after they adjourned, and asked him if he would excuse me for the 29th, because I had made the appointment with this party from Utica. He was to meet me at the Pennsylvania Depot at 11:30, and I could not get in touch with him. After considerable discussion with Mr. Wood he said, "You call up Slade & Slade, and if they will excuse you, I will excuse you for to-morrow only." I called them up and they said it was all right, and I was excused for the 29th. I got back on the night of the 29th. On the 30th I reported back into court, and I reported to Mr. Hershenstein, and he said: "You report to Mr. Wood."

Mr. CARLIN. Suppose you just ask the witness a question.

Mr. WALSH. Did Mr. Wood ask you at any time to change the statement you made to him about your employment of Safford?

Mr. PALTROWITZ. Yes, sir; on the 30th, when I got back, he asked about employing Safford.

Mr. WALSH. What did he say to you along the line of asking you to change your statement?

Mr. PALTROWITZ. He said, "Now, Mr. Poltrowitz, you know that you are not to pay Mr. Safford. You know that Slade simply got you to put him there. Now, is not that the fact?" I said, "No, Mr. Wood, it is not the fact. I engaged that man provided he was satisfactory, on examination." "Well," he said, "all right, if that is the way you look at it." He said, "Where is the subpoena?" It was handed to him and he wrote on the back, "Excused for yesterday." He did not say excused for the jury.

Mr. WALSH. Did you have any trouble getting your witness fees?

Mr. PALTROWITZ. I have not got them yet.

Mr. WALSH. Did you try to collect it?

Mr. PALTROWITZ. Yes, sir; I wrote two letters, both to Mr. Hershenstein and Mr. Marshall and received a letter about it. The subpoena shows I was entitled to four days.

Mr. NELSON. Did you testify in the Safford case?

Mr. PALTROWITZ. No, sir; they did not call me.

Mr. NELSON. They did not call on you?

Mr. PALTROWITZ. No, sir; they have never paid me yet, either.

Mr. WALSH. Did Mr. Hershenstein tell you that before you could get the witness fee you would have to sign an affidavit?

Mr. PALTROWITZ. Yes, sir; the clerk did.

Mr. WALSH. And you refused to sign that affidavit?

Mr. PALTROWITZ. They asked me to swear to the affidavit and I refused to do it unless Mr. Wood signed it.

Mr. CARLIN. As to what?

Mr. POLTROWITZ. As to the number of days I was in court.

Mr. GARD. Is that the reason you have not been paid—because you would not state how many days you were in court?

Mr. POLTROWITZ. My opinion is that Mr. Wood felt a little sore because I did not change my testimony, and I was informed that they are supposed to put their name down for the number of days, whether it is correct or not. When they asked me to swear to it I said I would if Mr. Wood said it was all right—that I would swear to it. They deliberately tore the affidavit up and I have not been paid since, although I have written to Mr. Marshall and to Mr. Hershenstein.

Mr. GARD. Have you received a reply to your letter to Mr. Marshall?

Mr. POLTROWITZ. Yes, sir; I wrote, and he answered me how much I had coming.

Mr. GARD. That is all.

Mr. CARLIN. The committee will go into executive session just prior to adjourning for the day.

(The committee thereupon went into executive session, and at 12 o'clock m., adjourned.)

EXHIBIT No. 31, MARCH 4, 1916.

CITY AND COUNTY OF NEW YORK, ss:

Cecelia Siegel, being duly sworn, deposes and says: That I am a stenographer in the office of Slade & Slade.

That on the 7th day of December, 1915, Clarence LeGendre dictated to me certain facts, which facts I have subsequently transcribed from the dictation as given to me by the said Clarence LeGendre. That the copy of the transcript attached hereto is an exact copy as dictated to me by Clarence LeGendre. That in my presence Clarence LeGendre informed Mr. David Slade of the firm of Slade & Slade that immediately upon the same being completed he would sign the same and swear to it but that he could not wait any longer for the statement as he had other business to attend to.

Your deponent further says that since said statement having been dictated and transcribed by me to my personal knowledge we have attempted to get Mr. LeGendre on the telephone, but were unable to connect with him.

CECELIA SIEGEL.

Sworn to before me, this 20th day of December, 1915.

HENRY W. FRIED,

Commissioner of Deeds, New York City.

(My commission expires November 16, 1917.)

CITY AND COUNTY OF NEW YORK, ss:

Clarence LeGendre, being duly sworn, deposes and says:

I was assigned by the city editor to come to Slade & Slade's office to try to get a picture of Mr. David Slade and Mr. Maxwell Slade, and I came down here and I saw Mr. David Slade here in his office, and I told him what I wanted and he didn't seem to take to it; he didn't want to have his picture taken, and I started talking to him about the case and he told me the different things that has gone through and I told him that it was too bad that he hadn't had a picture made, or whoever was her counsel at the time hadn't had her picture made while she was going around with Osborne—the two of them. I said it is too bad that you didn't get a newspaper photographer or somebody to snap her picture while they were both together, then there could be no argument as to the man who was with Miss Tanzer, and just as I was saying that Mr. Maxwell Slade walked in the door and he said to me, "Couldn't you make a picture like that now?" And I said I could, and showed him the camera that I had under my coat. And then Mr. David Slade spoke up and he said: "I will tell you what I will do; if you can tell me where Mr. Osborne

goes at night, I don't care where it is—a club or any place where he is at night where she can find him—I am willing to have Miss Tanzer go there and you can come along and I will have her go right in and either sit down beside him or point him out and show that he is the man, and you can get that picture."

Then I left here and went over and saw Mr. Roger P. Wood, the district attorney, and I asked him where Osborne frequented at night; where he used to eat or did he go over to the New York Athletic Club, and of course he asked me why I wanted to know and I told him that Mr. Slade was willing to have Rae Tanzer go up there and point him out, sit down beside him, or whatever it was, and that I wanted to get the picture of her identifying Osborne. So he said "Is that so? Well," he said, "you come right in here and tell Mr. Marshall that." So I went in and saw Mr. Marshall. There was Mr. Marshall and Mr. Wood in there and, I think, Hershenstein, and without my saying a word why Mr. Marshall said, "Do you know what they want to do with that picture?" He says, "They want to take and buy that picture from you and use it and say it was taken six months ago. Now," he said, "we will carry this thing right through. I will get a man that is an expert evidence getter and we will fix it up that you can get that picture and you try to dispose of it." So they sent for their expert evidence getter who he said was the man that had gotten all the evidence in the Passport case, by the name of Baker, and also sent for Jim Osborne, and in the room then were the District Attorney Wood, Marshall, Hershenstein, Osborne, Baker, and myself. So Mr. Marshall told this story to this expert Baker, and explained to Baker what we wanted to do, and Baker, right off the reel, said, "Why, that is ridiculous." He says, "Why they wouldn't try anything like that; they wouldn't fall for a scheme like that." So Jim Osborne then said, "Well, I tell you what you could do," he says, "can't you make a composite photograph?" And I told him I could, and he says, "and by putting them together like so as to take my picture and Miss Tanzer's picture and put them together in such a way so as to look as if they were taken together," and he says "that would save me the trouble of going up there and sitting down." In other words, he didn't like the idea himself of having her come in on him and getting this picture.

I told them that I could make this picture, and I said I would, so they told me—they impressed me—that I must take it over here and sell it or offer it and show it, and that Slade would want to buy it, and that I was to charge a price for it. So they made arrangements for me to go and call Slade on the telephone, and I went down to the Park Row Building and called the office up on the phone, but I don't know who I got; but, anyway, I made arrangements to come here the next morning at 9 o'clock. I had made arrangements that I was to call Mr. Slade, and I spoke to him over the telephone from the Park Row Building, and I was to make arrangements about getting a picture, and I told him that I would be there at 9 o'clock in the morning and let him know where Osborne would be so as we could get that picture, and I went back to Mr. Marshall's office, and they had gone, or something; but, anyhow, I went back to The World, and I made a picture of Jim Osborne and Rae Tanzer together, called a composite picture, but a picture printed on the same paper—the two of them together, so that you couldn't tell whether they were taken together or not. It looked as though they were taken together; there was no way of telling that they weren't.

Well, with that picture in the morning—the following morning—I went down to Mr. Marshall's office, and I showed it to Mr. Marshall, and Marshall looked at it, and he said, "that this is the most dangerous thing that I have ever seen in the light of evidence." He said, "I am going to keep this picture," and he wrote on the back of it who it was from and under what circumstances it was made (supposed to have). He said, "I am going to keep this picture just to show what can be done in the photographic art."

When I left there I came over to Mr. Slade's office and gave him a picture—a full-face picture—of Jim Osborne, he having asked me the day before if I had a good picture of Osborne, full face, saying that the only one he had was a side-face picture taken some time before, and that it was hard to make investigations with it. The picture that I gave Mr. Slade of Mr. Osborne was one I had made a couple of days before of him (Jim Osborne) while he was walking along the street in front of the post office. Well, then, when I came in here they seemed to be all excited, and I couldn't see Mr. David Slade, and I saw Mr. Maxwell Slade, who came in, and I handed him the picture of Jim Osborne alone. I was told then at the door by some one—I don't know who it was—told me that Safford was in one of the rooms here.

Then I went over to Mr. Marshall's office, and I told him that they were busy over here, and that I couldn't get a chance to talk to them about making the arrangements to meet Jim Osborne that night.

I was subpoenaed to appear before the grand jury and testified to the same facts as herein stated in the first part of this affidavit up to the point in regard to the making of a photograph of the girl and Jim Osborne in some place where she was to come and point him out.

The purpose for which I wanted this photograph was for use in the New York World, not for Mr. Marshall or Mr. Slade, but for my own use, and had I gotten the picture of Rae Tanzer pointing out Jim Osborne as being the man, it would have been for myself absolutely and nobody else. At no time did Slade & Slade suggest to me to give them a copy of that photograph to be used for any purpose whatsoever, and at no time did Slade & Slade ever suggest to me to make anything but an absolutely fair photograph of Rae Tanzer pointing out Jim Osborne for my own use.

Then I was summoned again before a grand jury and questioned as to the wording of the first one. They read over the testimony and wanted to know whether there was any testimony in that that I wanted to change, and I told them no; that I wanted to change nothing; and then they asked me as to whether Mr. Slade said to me, "And you can get that photograph." and whether he said "for me," but I told them that the "you" meant for me—for my own use.

Before the second grand jury I gave the full statement as to how the composite picture came to be made, and at Jim Osborne's suggestion and not at Mr. Slade's suggestion; that Slade knew nothing about it, there being in the room at the time Roger B. Wood, Mr. Marshall, Mr. Baker, Mr. Hershenstein, and Osborne.

Q. (By Mr. DAVID SLADE.) Mr. LeGendre, isn't it a fact that Mr. Marshall tried to suggest to you that the taking of the photograph of Rae Tanzer and Jim Osborne was to be taken at our suggestion, and that we were to use it at a trial? Didn't he try to suggest it to you?—A. Yes; they suggested to me that that is what you wanted me to take that picture for.

Q. Well, now, isn't it a fact, Mr. LeGendre, that at no time did either Mr. David Slade or Mr. Maxwell Slade or anybody on their behalf ever ask you to make a photograph of any kind, nature, or description for the Slades, to be used at any trial or any other place?—A. No; they never asked me to make any picture for themselves; everything I was to make was for my own use.

Q. Isn't it a fact, Mr. LeGendre, that at no time did any one of the Mr. Slades suggest to you an improper motive for the making of a photograph of Miss Tanzer and Mr. Osborne?—A. They never suggested it to me.

Q. Isn't it a fact that as a newspaper man you desired to have Miss Tanzer point out Mr. Osborne, and for that purpose you wanted a photograph?—A. Yes; because at that time Rae Tanzer, according to what I knew, had been trying to find Jim Osborne, had waited in front of his office to identify or to find him, and had been down to his office and waited around there and tried to see him.

Q. Mr. LeGendre, did either one of the Slades at any time ask you to bring a copy of the photograph of any kind of Rae Tanzer and Mr. Osborne together?—A. No.

Q. Did any one of the Slades ever offer to buy, purchase, or pay you for the making of a photograph of Miss Tanzer and Jim Osborne together?—A. No.

Sworn to before me this 7th day of December, 1915.

EXHIBIT No. 32, MARCH 4, 1916.

Hon. Mr. CARLIN,

Chairman Judiciary Committee, New York City.

DEAR SIR: I wish to be afforded an opportunity to appear before your committee so as to have you investigate charges against Mr. Marshall and his assistants.

If it is within your power to fix the responsibility for a willful neglect of duty and the failure of these officials to prosecute the most dangerous arch-conspirator in mail-fraud cases in this country, I wish to be heard.

If it is possible for this man, with the influence of United States commissioners and district attorneys, to go unmolested and procure suspended sen-

tences a number of times in these courts, and thereafter to further conspire to commit these frauds upon merchants throughout the United States without being prosecuted, especially when these officials know the facts, I believe it is high time that influence should not be a bar to justice and the performance of their duties when crimes are committed and called to their attention.

These facts are now matters of record in these courts and they speak for themselves.

I have decided to cast my lot and suffer the consequences of a public exposure of my misfortunes with these parties, but in so doing I believe justice will be best served when the public knows why these officials make fish of one and flesh of another.

Awaiting your favor, I am,

Respectfully,

E. EBER,

153 East Seventy-ninth Street, New York City.

PERSECUTION VERSUS PROSECUTION IN THE UNITED STATES DISTRICT COURT, NEW YORK CITY.

THE MANTLE OF "MOTHER MANDELBAUM" SETTLES ON SAMUEL KOLLER—NEW YORK'S ARCHCRIMINAL AND EX-CONVICT, WHO PURSUES HIS CAREER OF FRAUD UNDER THE PROTECTION OF THE FEDERAL DISTRICT ATTORNEY OF THE SOUTHERN DISTRICT OF NEW YORK, MR. H. SNOWDEN MARSHALL.

If you doubt it is possible to be persecuted, if you still doubt that influence is a bar to justice, if you doubt that the laws of the Federal courts in this district are elastic and can be made to benefit the few who are on "the inside," then read on, read on.

The press of New York have many times exploited the career of the State and Federal protected criminal, Samuel Koller, a notorious dive keeper, crook, swindler, thief, and ex-convict, whose record of crime is as long as your arm.

Some readers may well remember his mother-in-law, the notorious Fagin and keeper of fences for the crooks of a decade ago, "Mother Mandelbaum," who was immune from arrest during her spectacular career in this city.

That the mantle of "Mother Mandelbaum" has fallen upon Samuel Koller, and that he is enabled to pursue his criminal activities unmolested is no myth.

That "Mother Mandelbaum" exacted a promise from the police department of protection for her son-in-law, Samuel Koller, a legacy which, it is alleged, Koller has reaped the benefit at the hands of the United States and New York district attorneys in the past, is a matter of record on the yellow ticket of the police department of the city of New York, which shows he can be arrested, but not indicted and prosecuted.

Why not?

He has done time before the mantle of "Mother Mandelbaum" had time to settle officially on his shoulders, but not of late years.

Further reasons for Koller's immunity from arrest are that until lately mortgages upon his property have been held by a prominent detective and also a former deputy police commissioner of this city, and that a certain United States commissioner stands ready to defend his interests whenever called upon.

That this rogue will cross the reader's path is a possibility, as sure as a lion will seek prey if allowed to roam.

That he has crossed the writer's path is the reason this exposure is possible.

Without experience we learn little. Experience costs time and money.

The axiom, "Seek and ye shall find," is here injected as part of my experience. I believe it works both ways.

Some seek you and some you find.

My experience makes me believe Koller sought me as his prey—and the following story will bring to light facts that show how it is possible for the "underworld" to bargain with justice, if "it knows how."

My acquaintance and trouble with Sam Koller began in April, 1914, when I discovered that he had appropriated a trade-mark owned by me under which I was engaged in a legitimate business. My company, therefore, was compelled to obtain an injunction from the Supreme Court of New York against Koller and his associates, which forbade them to use the said trade-mark. (See annexed injunction circular.) An agreement was entered into subsequently

between Koller and my company by the terms of which he was to deliver to us certain contracts obtained by him which were infringements upon our business, and thereafter Koller foisted himself upon the company's office. His contracts did not materialize. Having no business interests in common with him, I was compelled to order him out of my office when I discovered that he imposed upon my hospitality and forged drafts upon my company while I was absent from the city at different times.

For both of these things Koller swore revenge upon me, and in March, 1915, he falsely implicated me in a mail-order conspiracy (of which he alone was the originator and head, as alleged on the witness stand by his accomplices, Chink Mandelbaum, his nephew; Louis Wetstein, and Nathan Nadelman) to defraud by the use of the United States mails.

I was arrested without a warrant by Post Office Inspector Barber at my offices, upon the order of Assistant District Attorney Frank M. Roosa at 9 a. m. and was brought down before United States Commissioner Houghton at 10.30 o'clock a. m.

No warrant or indictment was issued at this time for my arrest, whereupon Mr. Roosa drew up a short affidavit for Inspector Barber to sign and I was held in \$5,000 bail for an examination before the commissioner. I had no examination, but was indicted later upon the testimony of Samuel Koller's gang.

The testimony in this case brings to light that Mr. Roosa at the time he ordered my arrest had no evidence or any information from any of the defendants who pleaded guilty, that I had any connection with their scheme, except what Koller's motive was for placing the blame at my door.

On March 12, 1915, the following article appeared in the New York papers which was given out to the press from Mr. Roosa's office:

[New York American, Mar. 12, 1915.]

"ELEVEN ARRESTED IN \$200,000 DRY GOODS SWINDLE—INSPECTORS DECLARE JACOBSONS OBTAINED CREDIT FROM OUT-OF-TOWN DEALERS USING PIRATED NAMES.

"A clever band of alleged swindlers, who are believed to have defrauded out-of-town business men and manufacturers out of over \$200,000 worth of goods, was rounded up yesterday by post-office inspectors under the direction of Assistant United States Attorney Frank M. Roosa.

"Heading the band are Adolph Jacobson, otherwise known as Adolph Jansen, and his son, William Jacobson. The others are Edward Stern, Simon Weissburg, Emil Erber, Nathan Nadelman, Louis Wetstein, Emil Zipper, Morris Stavsky, Ludwig Lasker, and James Grand.

"According to the post-office inspectors, the Jacobsons conducted the Manufacturers' Trading Co., at No. 15 Whitehall Street, the other men being employed by them. They selected the names or prominent firms in this city, it is charged, and opened establishments with names but slightly different from those of the legitimate firms.

"They would then order large bills of goods from out-of-town firms on credit. The firms, believing they were selling to the concerns whose names had been "pirated," would have no hesitancy in sending the goods, which would then be sent to the headquarters in Whitehall Street.

"Among the names operated under were the Eagle Skirt Co., Standard Trading & Commission Co., and O. M. Perla.

"The eleven men were held under \$5,000 bail each by United States Commissioner Houghton."

The desire of Mr. Roosa to further persecute me is herein shown.

I was not arrested or indicted to my knowledge in the swindle mentioned, never knew Jacobson, and certainly never was employed by him in the conduct of any of the firms mentioned therein. Neither was I engaged in the scheme which Koller laid at my door. There was no incentive for me to enter any such scheme when I had a business which required all of my time.

Later on, while I was endeavoring to prosecute Koller for forgery, Mr. Roosa again started a fishing expedition (a la John Doe) into my business, and Sam Koller was quite active in interviewing my landlord and intercepting other persons entering my place of business and instructing them to see Mr. Roosa, with the result that I was openly slandered by Koller and later by Mr. Roosa to many divers persons. This procedure was while I was under indictment awaiting trial, and he knew he had no direct evidence against me except what Koller made up of whole cloth.

Koller's motive was self-evident. He was not running around to injure me without doing himself some good.

Subsequently I succeeded in having Koller arrested for forgery, after I obtained a report from Mr. David N. Carvalho, the State's handwriting expert, that Koller's writing was upon the forged checks I discovered.

It was while this case was pending in the Tombs police court that I was called upon the telephone by Mr. Reuben Peckham, secretary to James W. Osborne, and who requested me to "let up on Sammy" and he will have Mr. Osborne help me out in the United States court, as he has a nephew there now who is an assistant.

I told Mr. Peckham "that I would not compromise a felony for any consideration and would not patch up my differences with Koller."

The following day Koller was held for the action of the grand jury by Magistrate Dodd, but the case wound up suddenly without further prosecution for some occult reason which Mr. Charles Albert Perkins, former district attorney, can give you a better version of the result of some influence that I know was brought to bear in Koller's behalf.

This persecution became so unbearable thereafter that Mr. Roosa and Koller began another fishing expedition into my affairs so as to embarrass and hinder me in business still further.

The brazen methods that were being pursued by them showed me that they were drunk with power and could make or break a man's business at will.

After due deliberation I decided to lay the matter before the Department of Justice at Washington for an investigation of their conduct, and wrote to Attorney General Gregory under date of July 12, 1915, as follows, as per annexed copy of letter.

The reply from the Attorney General's office is also annexed hereto, with a request that action be deferred for some time.

The fact that I had taken up this matter with the department in Washington in my own protection soon became known in the United States district attorney's offices, as I was informed, and the animosity of those who realized what an investigation might disclose became more bitter against me.

Again, this time on August 8, 1915, the following article appeared in the New York City newspapers, and was given out by Mr. Roosa to the City News Association for publication.

His desire to further persecute me is shown therein :

[New York American, Aug. 8, 1915.]

"TWENTY-TWO INDICTED FOR \$50,000 MAIL FRAUD—LEON BAMBERGER, KNOWN AS SWINDLER, DECLARED LEADER OF BAND INCLUDING DOCTORS AND LAWYERS—NINETEEN DEFENDANTS, MANY OF THEM WELL-KNOWN MEN, ARRESTED BY POST-OFFICE INSPECTORS—INTERCHANGE OF 'REFERENCES,' ON WHICH GOODS WERE OBTAINED, SAID TO BE PART OF THE SCHEME.

"Leon Bamberger, internationally known as a swindler, and 21 alleged confederates, who, it is charged, assisted him in mulcting scores of concerns out of goods worth more than \$50,000, were indicted yesterday by the Federal grand jury on a gigantic mail-swindle charge.

"Nineteen of the defendants, many of them well known, have been arrested by Post-Office Inspectors Barber and Schaeffer. The other three include a physician and a lawyer, and are being sought by Federal agents.

"THOSE UNDER ARREST.

"Those taken into custody yesterday are:

"Leon Bamberger.

"Henri P. Alexander, optician, No. 165 East Eighty-sixth Street.

"Harry Kramer, No. 44 Whitehall Street, connected with the New Hellenic Transatlantic Steamship Co.

"Charles W. Boye, real estate agent, No. 2115 Story Avenue, Bronx.

"Frank L. Seaver, No. 14 West Sixty-fourth Street, connected with Capri-corn Chemical Co.

"Emil Erber, of Photo-Play Coupon Co., Longacre Building.

"Henry W. Probst, of United Pearl Button Works, No. 112 East Nineteenth Street.

- "Joseph B. Schwartzberg, lawyer, connected with Century Bond & Mortgage Co. and Gotham Tax, Bond & Mortgage Co.
- "Harry L. Gould, connected with Equitable Finance Co., No. 177 Broadway.
- "Herman Roth, lawyer, of Honnicker, Roth & Davis, No. 280 Broadway.
- "Jack Levy, husband of Della Fox, actress, No. 1547 Broadway.
- "Henry C. Ritzheimer, No. 640 West One hundred and thirty-ninth Street.
- "Dr. Francis E. Smith, No. 1133 Broadway.
- "Herman Radus, Crescent Music Co., No. 1431 Broadway.
- "Achilles Seraphic, South American Commercial Co., No. 44 Whitehall Street.
- "Efstraty Soter, No. 235 Canal Street.
- "George Horn, Jr., café owner.
- "Sigmund Weitzenhilm, No. 164 West One hundred and forty-seventh Street.
- "Harry S. Goldman, Latin-American Film Co., No. 1581 Broadway.

"HOW IT WAS DONE.

"The indictment charges Bamberger obtained employment as salesman for the companies who are alleged to have been swindled, and placed orders for printing and merchandise and directed the sending of the goods to the other 21 defendants who 'were falsely represented as customers of good financial standing and responsibility.' Many of the deals were arranged by correspondence.

"It was part of the scheme, the indictment charges, that the customer-defendants give to the merchants, one for the other, false and fraudulent references as to financial standing and responsibility of each other.

"On the acceptance of the orders, Bamberger would collect his commissions. In addition to getting pay from the defrauded merchants, it is charged, he also got a percentage of the money realized by the quick sale of goods sent on order to his numerous confederates.

"SOME OF THE VICTIMS.

"Some of the companies who are said to have suffered are the Marbridge Printing Co., Bernard Koplik, National Shirt Co., Neuman Bros., Evers Bros., the Tudor Press, Schulco Press, Greenpoint Power Press, Latimer Press, Eagle Chemical Products Co., Anthony Paul, Jacobs & Gilman, Continental Press, Edward L. Murray, Century Printing Co., Sixto Dumont, Ransom-Parker Co., Edward E. Eccardt, Jacob Rubin, the Lincoln Printing Co., Francis E. Fitch, Halstead Brush Co., Sempler-Rieger Co., Commercial Dispatch Co., Chinese-American Food Co., Berg Printing House, James F. Newcomb & Co., W. A. Stewart & Co., Ripin & Co., Robbins Supply Co., Washington Cigar Co., Liberty Fountain & Gold Pen Co., Mable & Co., H. M. Mills Sponge Co., Mans Bros., Phinotas Chemical Co., Modern Art Printing Co., Harman Bros., F. W. Bromell, Frick & Klein, Taboga Coffee Co., Peter Pulver & Sons Chemical Co., Colgan Engraving Co., and Direct-Plano Co."

Again, I was not arrested, not indicted to my knowledge, nor held or prosecuted in this case, but nevertheless my business interests suffered by reason thereof of this willful and deliberate libel.

After a brief investigation I learned that Koller was again active with Mr. Roosa and called upon said Bamberger to persuade him to implicate me in the said scheme. Later I learned from Bamberger that Mr. Roosa had him brought down from the Tombs daily for two weeks and tried to induce him to make a statement implicating me in his transactions and scheme, and when after all these visits Bamberger refused to do so Mr. Roosa consented to reduce Bamberger's bail from \$7,500 to \$1,000, which was done, and then gave him a week to furnish the same. Mr. Roosa's tactics here were the same he employed in the case in which I was arrested, but there he had an adept pupil and relation of Koller's to deal with, who was willing to swear to anything to save his uncle from going to jail. The other defendants would readily swear to anything, as they were Koller's tools, and he succeeded in getting them out on their own recognizance.

It required great strength to withstand these willful abuses and attacks from time to time, and I had to strain every source to hold my health and business together.

Now, on October 4, 1915, the case of *The United States v. Nadelman et al.*, in which I was a defendant, and falsely accused of being connected therewith by Koller, appeared upon the monthly calendar, and the same was set down for October 7, 1915.

Without notice to the bonding company upon my bond, or to me or to my attorney, Mr. Roosa called this case for trial on the 6th of October, 1913, and had my bail forfeited, as neither my attorney nor myself appeared in court. Thereupon my attorney's offices were telephoned to that the case was proceeding to trial without me, and my attorney reached me by phone and I arranged to meet him in court. Upon our arrival there I was forced to go to trial that same day unprepared, without papers that were required by me upon my trial, a jury panel in court listening to arguments about my bail being forfeited and singled out as the brains of the scheme, and last, but not least, I was denied a separate trial, as was my desire.

But Koller, the brains and real culprit of this conspiracy, was not on trial. Why not?

The testimony clearly shows that Koller was the man solely responsible for the ruination of the other defendants and concerns, besides myself.

I was marked to do time for Koller. Someone was singled out to go to jail for this scheme. It couldn't be Koller of course. It couldn't be his nephew "Chink" Mandelbaum. It couldn't be the other defendant concerns who showed that they did a legitimate business with some of the defendants despite their denial that it was so. Mr. Roosa would not be so means as to send the concerns to jail who were defrauded out of their property at Koller's instigation and under his guidance. There was only one person left to answer for Koller's crime and Koller and Mr. Roosa did not have to go very far to corral these confederates of Koller to do their bidding, and I was to do his time.

I tell you Koller had some scheme. To further it, it became necessary for him and his confederates to steal the records of firms with whom I was doing a legitimate business. This was easily possible, because Koller's nephew was in my employ as a salesman at that time. The other confederates came to see Koller's nephew and Koller at my office and eventually they framed this scheme that it should be laid at my door. This scheme was out of the ordinary in more than one particular respect. Koller procured mercantile references from reputable business concerns of long standing in this city, who were unknown to me, yet I was indicted for conspiring with these concerns who were accused of giving false references for Koller's gang. These concerns were also indicted, but were acquitted. Yet without their aid and assistance this conspiracy could not be possible. In about the same manner that Koller's gang stole my correspondence with various concerns, this gang of Koller stole the mail from the other defendant concerns who acted as references and accordingly answered these requests for references in a manner to suit themselves.

I believe an inspection of the grand jury minutes in the case of *The United States v. Nadeleman et al.* would bring to light much incriminating information as to how I was indicted, when, according to Mr. Roosa's statement on the witness stand, "he did not know of any direct connection I had with the scheme at the time of my arrest."

The testimony given about that time was by Koller's nephew "Chink" Mandelbaum Louis Wetstein, and Nathan Nadelman, who then were under very heavy bail and lodged in the tombs, and after a visit from Koller and meeting him in Mr. Roosa's office their bail was reduced from \$5,000 to \$500, and furnished by a stranger unknown to them to this day.

There is no doubt in my mind that Koller made a bargain for them to protect himself.

Yet without some influence how was this possible?

Knowingly and willfully, Assistant District Attorney Roosa shielded and prevented Koller from being prosecuted.

The jury in my case after a five days' trial returned to court and stated that they could not agree upon a verdict against me, whereupon Judge Shepard, of Florida, then directed the jury to reconsider the case and they were given five hours more to reach a verdict. At 10.50 p. m. they brought in a verdict finding me guilty on all the counts in the indictment.

The verdict is inconsistent with the evidence and was not corroborated in any particular instance by any one, the evidence being solely upon the testimony of Koller's self-confessed gang of conspirators.

I was sentenced to 18 months and was released upon a writ of error under \$7,500 bail, pending appeal, while these self-confessed defendants were each liberated under a suspended sentence.

If Koller can succeed to get a few suspended sentences for himself he certainly can get them for a few of his friends.

He even tried to get me to plead guilty and stated that he would get a suspension of sentence for me. This was during the month of March, 1915, while I met him in the post-office building on my way to Commissioner Houghton's office for examination.

That Koller is the potential force actuating the United States district attorney's office against me to satisfy a personal grievance is here clearly shown.

That I was not being prosecuted for conducting my business in any unlawful manner is a matter of record.

That I was the victim of a most dastardly frame up, at Koller's instigation is self-evident.

That I was being persecuted time and time again to further Koller's interests by Mr. Roosa is a positive fact.

The reason for protecting his interests is above set forth.

It is no miracle that he escapes punishment. His attorney Mr. James W. Osborne and United States Commissioner Hitchcock have on more than one occasion helped him win his freedom.

Koller has been engaged in conducting and participating in mail frauds for many years. He has also frequently ensnared other innocent parties during his career so as to obscure and cover up his directing hand in said frauds as the record of the following cases will reveal:

Conspiracy to defraud by use of United States mails. Pleaded guilty before Hon. Judge Chatfield, Brooklyn United States District Court. Sentence suspended.

Conspiracy to defraud by use of United States mails. Pleaded guilty before Hon. Judge Hough, New York City United States District Court. Sentence suspended.

Grand larceny, first degree. Pleaded guilty before Hon. Judge Goff, New York Supreme Court, criminal branch, New York City. Sentence suspended.

The yellow ticket at police headquarters will reveal other astounding facts of miscarriages of justice in the last few years.

There is no doubt that Koller will reap other benefits of that famous legacy which was publicly boasted of.

Why has Mr. Marshall and Mr. Roosa failed to prosecute Samuel Koller for his activities in this fraud case?

Why had not Mr. Marshall informed the judges who suspended sentences upon Koller of his conduct in this case and call for a revocation of these suspended sentences?

When is a suspended sentence not a sentence?

Why did Mr. Marshall and Mr. Roosa assist in releasing Koller's gang, and subject merchants to be defrauded without redress against the guilty ones?

Was it because he did not have a case against Koller? Or was it because Koller's attorney and friends, Mr. James W. Osborne and Commissioner Hitchcock, told him to let up on Koller?

Let him explain.

It is not too late to bring Koller to justice, as the facts are now a matter of record in the Federal court.

So far, from the foregoing facts and the actions of Mr. Marshall and Mr. Roosa, each of them are utterly unfit to hold their present offices to the great scandal, disgrace, and injury of the said office and the people of this great city, while they continue to perform their official duties along the above lines of procedure, and wilfully and knowingly aid Samuel Koller in his conspiracies and allow him to go scot free, and at his command aid and assist in persecuting the writer without just or proper cause therefor.

Respectfully submitted.

EMIL ERBER.

BEWARE OF INFRINGEMENTS.

To theater managers, merchants, and the public who are using Photo Play coupons and Photo Play stamps:

You are hereby notified, that we, the Photo Play Coupon Corporation are the sole owners of a trading-stamp device known as Photo Play coupons and Photo Play stamps, and as owners of said duly registered trade-mark under the laws so provided, you are hereby cautioned against any infringement of said trade-mark in any form whatever, printed or marked on paper, silk, linen,

cloth, leather, or metal and used on a label, stamp, coupon, or other device, and what is commercially known and termed as a trading-stamp device.

Be it known that photoplay coupons or similar devices issued by one "International Theater Coupon Corporation," of 1493 Broadway, New York City, is an infringement of the above-mentioned trade-mark, "Photo Play Coupons," and actions for infringement have been commenced against the International Theater Coupon Corporation and others for an infringement thereof.

By an order of Hon. Justice Lehman of the Supreme Court of the State of New York, dated New York City, April 24, 1914, at the county courthouse in the Borough of Manhattan, it was ordered that the "International Theater Coupon Corporation and all others as defendants, and any and all persons acting for them in any manner, be and they are and each of them is hereby enjoined and restrained from dealing in, selling, or offering for sale coupons similar in color to those in use by the plaintiff at the present time, or any other coupons, stamp, or ticket bearing the words or insignia 'Photo Play,' and from printing, advertising, giving away, or in any way disposing of any coupons similar in color to those in use by the plaintiff at the present time, or any other coupons, stamp, or ticket bearing the words or insignia 'Photo Play,' and the said defendants and each of them, their agents and servants are further enjoined and restrained from advertising or in any way representing themselves or the International Theater Coupon Corporation to be the successors of or in any way connected with the Empire Photo Play Corporation or the Photo Play Coupon Corporation."

Under the laws in relation to trade-mark, patents, etc., theater managers, dealers, merchants, and others are liable for damages and profits for the manufacture, sale, or use of any coupon or trading-stamp device embodying any infringement thereof.

We propose to protect our rights and warn all persons against making, selling, accepting, or using, any photo-play coupon, photo-play stamp, moving-picture coupon, moving-picture stamp, theater coupon, theater stamp, or embodying any infringement thereof.

Ask for photo-play coupons and photo-play stamps that are issued only by the

PHOTO PLAY COUPON CORPORATION,
33-39 West Thirty-fourth Street, New York City.

Hon. THOMAS GREGORY, Esq.,

Attorney General United States of America, Washington, D. C.

HONORABLE SIR: I wish to lay before you charges against one Samuel Koller, now under two suspended sentences from the Federal courts (New York district) for mail frauds, and also charges against those officials which an unbiased investigation will disclose.

This Koller has been and is engaged in conducting or participating in mail frauds in violation of section 215 for many years. Whenever his arrest is caused on account of continuous complaints, he is able to plead guilty and procure a suspended sentence.

At first glance one suspension of sentence may be overlooked. A second one is questionable, because of the repetition of a similar crime and no doubt the result of negligence and conspiracy of officials who should have done their duty, instead of being bargained with for leniency through influence brought in his behalf.

But when this scoundrel continuously sets about to conspire similar mail frauds and tries to ensnare and injure others in the operations of his criminal activities it is high time that the public be informed as to the methods of officials and said Koller and an investigation be conducted to inquire the reason of this laxity in the administration of equal justice without fear or favor.

Knowing the friendly relations between the Department of Justice and said Koller in New York City, I believe that an appeal to them would be useless, because of the harmony that exists; in any event any charges against them would be pigeonholed.

I therefore bring the following charges to your notice:

1. That said Koller was the archconspirator in an elaborate mail-order fraud, and did ensnare others to do his bidding while at liberty under a suspended sentence for a similar offense in Brooklyn and New York City United States district courts.

2. I charge that either the officials of your department, their assistants, or subagents were deceived by said Koller in statements made to them or that they have been working in harmony with Koller to injure business concerns and citizens without any just or legal cause therefor.

3. I charge that they are guided by the influence being brought forward in Koller's behalf and allow him to continue his depredations from time to time unmolested.

The evidence I possess is indisputable, corroborative, and sufficient to show Koller up as the archconspirator who has planned to injure and defraud scores of innocent persons.

I doubt if your office would allow an injustice being done to any citizen or firm by reason of any influence or personal activities exerted in the behalf of one of the most dangerous criminals in the history of this country.

I believe that an unbiased investigation should be made into the conduct of said Koller since the first sentence was suspended, and should evidence be adduced that innocent persons have been made to suffer through his acts in violation of the terms and meaning of a suspended sentence, the officials at bar or your office should take such steps to administer justice as the circumstances warrant, and vindicate the innocent ones.

The writer desires an interview with you at your earliest date, and if necessary will visit Washington to present the necessary evidence in confidence.

Awaiting your favor, I am,
Most respectfully,

EMIL ERBER.

116 West Fortieth Street, New York City.

Dated July 12, 1915.

DEPARTMENT OF JUSTICE,
Washington, D. C., July 19, 1915.

Mr. EMIL ERBER,

110 West Fortieth Street, New York, N. Y.

SIR: The department is in receipt of your letter of July 12, 1915, concerning two sentences imposed upon one Samuel Koller by the Federal court in New York, both of which sentences you say were suspended.

You should supply the department with a full statement of the circumstances involved in the cases to which you refer, when the matter will receive such attention as the facts may warrant. You are advised, however, that suspension of sentence is the act of the court and for which it is solely responsible. The question of the power of a Federal court to suspend sentence is now before the United States Supreme Court in the matter ex parte the United States, petitioner. It therefore seems advisable to defer any action in the matter to which you refer until a decision has been reached in that case, which is set for hearing October 12 next.

Respectfully,

WM. WALLACE, Jr.,
Assistant Attorney General.

For the Attorney General.

DEPARTMENT OF JUSTICE,
OFFICE OF THE UNITED STATES ATTORNEY,
EASTERN DISTRICT OF NEW YORK,
Brooklyn, N. Y., May 26, 1915.

Mr. E. ERBER,

110 West Fortieth Street, New York City.

DEAR SIR: Your letter of May 25, 1915, relative to Samuel Koller, addressed to Hon. Thomas I. Chatfield, district judge, has been referred by him to me.

If you will make an appointment to meet me at this office, I shall be very glad to go over any matters which you may desire.

Respectfully,

MELVILLE S. FRANCE,
United States Attorney General.

NEW YORK CITY, *May 27, 1915.*

Mr. E. ERBER,
110 West Fortieth Street, City.

SIR: I acknowledge yours of May 25 and have inquired into the case of Samuel Koller, upon whom I suspended sentence on November 13, 1912.

This sentence was suspended because Koller had been imprisoned in the Tombs awaiting trial for some seven months, which was in all probability about the amount of the sentence he would have received had he been found guilty by a jury. As a matter of fact, Koller not only pled guilty, but turned State's evidence against one Samuel D. Levy.

If you have any definite statements to make regarding the conduct of Koller since sentence was suspended you should make them to the United States attorney for this district.

Truly, yours,

C. M. HEUGH.

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Wednesday, March 8, 1916.

The subcommittee met at 11.50 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard. and Hon. John M. Nelson.

Also present: Hon. Frank Buchanan.

Mr. CARLIN. The committee will come to order. We will now have an executive session, and everybody will be excused except Mr. Buchanan. We will now take the testimony of Miss Tanzer.

TESTIMONY OF MISS RAE TANZER.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Just give your name and age.

Miss TANZER. Rae Tanzer; 25 years.

Mr. CARLIN. Your residence?

Miss TANZER. Must I give that? I do not want to do that.

Mr. CARLIN. Just give your address as New York—is New York your address?

Miss TANZER. Suppose they get hold of that address.

Mr. CARLIN. Your residence is New York, is it not?

Miss TANZER. Yes, sir; I thought you meant the home address.

Mr. GARD. Miss Tanzer, have you any objection to stating what your age is now?

Miss TANZER. Twenty-five. I will be 26 next October, the 11th.

Mr. GARD. Do you know the firm of Slade & Slade—calling your attention to David Slade and Maxwell Slade?

Miss TANZER. Yes, sir.

Mr. GARD. When did you first meet them, and which did you first meet?

Miss TANZER. I met them in about March 5, 1914, I think it was. I met Dave Slade first.

Mr. GARD. Where did you meet him?

Miss TANZER. In his office, 200 Broadway.

Mr. GARD. How did you happen to go there?

Miss TANZER. Mr. Max Steuer sent me there.

Mr. GARD. Was he the first lawyer that you went to see?

Miss TANZER. No, sir; he was not. I went to Arthur Hyman, and then from there I went to, I think, Olcott McManus—something like that—and Ruber.

Mr. GARD. The first was Hyman?

Miss TANZER. Yes, sir.

Mr. GARD. When did you go to him?

Miss TANZER. After the detectives came after me. James W. Osborne sent two detectives after me Thursday evening—

Mr. GARD. We want to know when that was.

Miss TANZER. That was February 16 or 15, I think.

Mr. GARD. The 15th or 16th of February, 1914, or 1915?

Miss TANZER. I think it must be 1914.

Mr. GARD. Two years ago?

Miss TANZER. Yes, sir; about that.

Mr. GARD. 1914?

Miss TANZER. I do not know now. I might be wrong.

Mr. FRIEDMAN. This is 1916.

Miss TANZER. I think it was 1914. Yes; I think it was 1914.

Mr. GARD. One year ago or two years ago?

Miss TANZER. Wait a minute.

Mr. FRIEDMAN. Was it last year?

Miss TANZER. No, sir; two years ago since this thing happened. It is about a year and a half ago.

Mr. GARD. What was the question?

(The stenographer repeated the question as follows: "When did you go to him?")

Miss TANZER. I went to him about February 16 or February 17, or maybe—

Mr. GARD. Within a day or two after the detectives came after you?

Miss TANZER. Yes, sir—no, sir; the next day.

Mr. GARD. Tell us about these so-called detectives, as you call them, coming to see you.

Miss TANZER. I was employed by Farrington & Evans, and about half-past 4, February 15 or 16—I can not remember exactly—two men came up to the factory. I was in the factory at the time, down on Fourteenth Street. We have two places on Fifth Avenue and on Fourteenth, and the manager of the place came out to me and said there were two police—no; two men from headquarters wanted to see Miss Rae Tanzer, and, of course, he called me, and when I got out I knew they were detectives. If they were not detectives, they were fake detectives or something to that effect. One said, "Are you Miss Tanzer"? and I said, "Yes." They said, "Did you send letters to Jimmie Osborne"? and I said, "Yes."

Mr. GARD. To whom?

Miss TANZER. James W. Osborne. He did not say "Jimmie." I said, "Yes," and he showed a badge and said, "I am a police headquarters detective," or something to that effect. I said, "What do you want?" He said, "Well, we are here to"—no, no; he said, "You sent letters to James W. Osborne?" I said, "Yes." "You know Mr. Osborne?" I said, "Yes." Of course they wanted to find out how I met him and where. I should not have spoken, but after they had asked so many questions I realized I was wrong.

I said, "Why don't you arrest me if you are detectives? I will not give you any more information." They said, "Why not settle this thing to-night? You say you got your jewelry—rings and diamonds, etc," and I said, "Yes." They said, "You gave them back?" I said, "Yes," and they said, "We will give them to you. You come to Mr. Osborne's office and we will wait for you." They said, "Have you a lawyer?" I said, "Yes." Of course I did not. They wanted to know if it was a male or female, and I would not tell them. One said, "Do you know Mr. Osborne is married?" I said, "Yes; I found out recently he was." They said, "What do you want?" I said, "I do not want anything. He called me up on February 11, and told me he was not the man." Of course, I felt very bad about it. His secretary—

Mr. GARD. Called you up—what?

Miss TANZER. Called me up February 11. This was two or three days before he sent the detectives.

Mr. NELSON. When you say "he" you mean James W. Osborne?

Miss TANZER. Yes, sir; he had his secretary call me up about quarter after 7. I remember it distinctly, because it was the day before Lincoln's Birthday, and she got on the phone—she asked for Miss Tanzer and my sister answered. She told my sister she wanted to speak to Miss Rae Tanzer. My sister told me, and I said, "Just a minute." I got to the telephone, and she said, "I am speaking for Mr. James W. Osborne," and I said, "Yes," and she said to me, "Mr. Osborne asked me to call you up and say he is not the man. He said he received letters at the New York Athletic Club and at his office," but that I had the wrong man. Of course, I got very indignant and lost my head and temper and I told her he was lying and that he knew he was the man and all that sort of thing, and she could not make any headway with me. She pleaded with me and said that he was not the man, and asked me to try to consider the matter. She then put another man on the wire, and James W. Osborne said it was he. He changed his voice and spoke very roughly, but I said, "I know just who it is, and you can not tell me any differently"—what else did I say? Well, I got very mad with him, and told him I knew better. He said he would call me up at half past 9—no; I asked what was the matter with the mail at the New York Athletic Club—did he receive his mail five months afterwards. I sent the letter, you know on November 8, and he received the collection about 9 o'clock, at 115 Broadway, and I think about 7 o'clock in the New York Athletic Club. He said they had not come until a few days ago, and he thought he would call me up and tell me I was mistaken. Of course, I told him there was something the matter with his mail. He could not make me understand, and I would not listen to him, and then he hung up the receiver. After that—the day after—someone called my phone and wanted to know where I was employed, and my sister would not tell them. He had the address on the bill-heads—Farrington & Evans. I sent the letters to him on that paper. Nobody paid any attention to me that day, and about the 16th of February, the detectives came to my place of business.

Mr. GARD. How long before you had this telephone conversation had you been with Mr. Osborne?

Miss TANZER. You mean seen him for the last time?

Mr. GARD. Yes.

Miss TANZER. About the latter part of November. I did not hear anything more about it. I said, "What am I to do? he is married and I will pay no more attention to him, and I intended to do that." He called me up February 11, and I felt very jealous when I heard the other woman talk, and thought probably he was out with someone else, and I was not going to do anything more, but these detectives came, and one said, "Suppose I give you the jewels"?—

Mr. GARD. You mean you became jealous when you were talked to by the woman in his office?

Miss TANZER. Yes, sir; I thought he had thrown me over.

Mr. GARD. That made you angry?

Miss TANZER. Yes, sir; very angry. That is what made me write the letter the next day and put his picture in it telling him I knew just who he was and he could not hide it.

Mr. GARD. That is what made you write the letter?

Miss TANZER. Yes, sir.

Mr. GARD. Is that the letter the Government officials got hold of?

Miss TANZER. No, sir; the other one was the one he had me arrested on. I told him just who it was, and it was not his diamonds or money, because I refused everything he offered me. I took his rings off my finger and told him they were too big, and that I could not wear them. He said if I wanted to keep them I could have them. In the letter I told him it was not his money, but that I loved him, and did he realize what he had done, and that I did not think he would do anything like that, but if I did not hear—no; I wrote and said if he came and told me he was sorry, and could not do anything, what could I have done with him? But he ignored me entirely. Of course, that is what made me mad. Then he sent detectives two days after I wrote the letter, and they were trying their best to get me down to his office. One said, "Will you have dinner with me?" I said, "Indeed not. I will not have dinner with anybody like you." They said, "We will get an automobile and take you down town," and I said, the subway was good enough for me or the cars. They said, "We will go there, or do you want him to meet you? We will have him call." I said, "Go back and tell Mr. Osborne that if he will come to me like a man and say, 'Rae, I am sorry for what I did.'" Well, he did not have to forgive me, but if he had said, "You see I am married; what can I do?" They said, "Can't we convince you," and I said, "No." They said, "Will you make an appointment to come to Mr. Osborne's office at 5 o'clock the next night?" Of course, I did not intend to go there—maybe I would have except Mr. Hyman told me not to.

Mr. GARD. Did you consult Mr. Hyman the next day?

Miss TANZER. Yes, sir; I did.

Mr. GARD. What did you consult Mr. Hyman for?

Miss TANZER. What did I consult him for?

Mr. GARD. Yes.

Miss TANZER. To protect me. I thought he was a big man and could do anything he wanted with me.

Mr. GARD. Did you consult him to advise you or to bring a suit?

Miss TANZER. No, sir; I did not want a suit. I never wanted any suit.

Mr. GARD. You did not?

Miss TANZER. No, sir; I did not.

Mr. GARD. How did you happen to bring the suit?

Miss TANZER. That was the only way. The Slades wanted to arrest him and I wouldn't allow them to.

Mr. GARD. They wanted to arrest him?

Miss TANZER. Yes, sir.

Mr. GARD. You would not allow them to do it?

Miss TANZER. No, sir.

Mr. GARD. What did they say about that—tell us what the Slades said about that.

Miss TANZER. They said they could hold him under the Mann Act and I said I would not have them do that. They said, "We will have to bring suit, but we will try to speak to him." They could not speak to him because he would not speak to them. They served the summons on him and he put it in the papers, and he, being well protected, what did he care? The next morning I saw it in the papers and I did not know whether I was alive or dead.

Mr. GARD. When the detectives first came to you, the first time, you went to Mr. Hyman and talked to him, for the purpose of getting advice as to your own protection?

Miss TANZER. Yes, sir.

Mr. GARD. These men had been to see you, and you were frightened?

Miss TANZER. Yes, sir; let me tell what the detectives did after they left me. They left me about 5.45, and I thought they were ready to go. When they were ready to leave me for good, I said to one of them—he said, "Well, what about the appointment to-morrow?"—I said "You write a letter when you want me to come." He said, "No; we will not write any letters." I said, "If Mr. Osborne is not afraid of me, and he says he is not the man, why not write a letter? Let him write me a letter on his business letter paper." I did not want him to call me up because I did not want any—I was being called up entirely too much, and I did not think the firm would like it. Everyone in the factory, help and all, that was looking at me and saying, "My God, what has happened to Miss Tanzer?" They did not dare to say anything, because they could not; but, of course, it put me in a terrible predicament. They promised to call me the next day. He said he would not write, but would call me. One of them showed me a letter that I had handed to Oliver on the Farrington & Evans letterhead, and I noticed it. I was not smart enough to say, "Give me the letter and let me see it." They had it in the envelope—the one produced at the Safford trial, not the hearing, and it just had five stripes across the name of Farrington & Evans, to cross it out.

Mr. GARD. You scratched it out?

Miss TANZER. Yes, sir; with five lines; but I did not see any stamp on it. He said to me, "Did you write this letter?" I said "Yes—no." He said, "Do you know this letter?" I said, "Of course, yes." It was on blue stationery. He said, "Well, you sent this letter?" I said "Yes." But I noticed no stamp and I did not turn around and say, "Let me see the letter." I do not suppose, though, they would have given it to me.

Mr. CARLIN. Did I understand you to say that you delivered the letter in person?

MISS TANZER. I gave the letter to him in his hand; and that is the letter they came and showed me; and, when I tried to tell the judge about it, I do not know whether he allowed me to say it or not. He would not listen to me.

MR. NELSON. Where were you when you handed the letter to him personally?

MISS TANZER. James W.?

MR. NELSON. Yes.

MISS TANZER. Three days after I met him, on the Circle—he gave me a letter he had. There was only one letter sent through the mail—and in answer to his letter, I handed him one.

MR. GARD. You handed it to Oliver Osborne?

MISS TANZER. Yes, sir; well, I left about 6 o'clock, I think it was. He got ready to go home, and when I got there I found the two men waiting for me. I said, "What are you doing here again? Can't you leave me in peace? I do not want to walk the streets with you." They said, "We will leave you right away." Instead of that, they kept on walking with me—one of these big men on each side of me and me in the center. They said, "Miss Tanzer, you have three letters." I said, "What of it?" They said, "Can we see those?" I said, "No; they are in the safe." They were not. They were in my muff at that time. One of them said, "Will you cut the corner of the letter, when you are coming to the office?" They tried to talk to me, but I would not talk to them. They went as far as the subway with me. I did not want them to go down into the subway with me. One said, "Why not let us take you home in a taxi or an automobile?" I said, "The subway is good enough for me." One of them said, "You have an appointment with some one, and you do not want us to go with you." "No; indeed, not," I said, and to show that I was not afraid, I said, "You can go along." I told them they could pay their fare and go along. I walked to Eighteenth Street, and one of them turned around and said, "Oh, don't make us run around here; let us settle the thing to-night so that we will not have to." I said, "You are detectives, and you want work. What difference does it make to you whether you settle it to-night or to-morrow? You tell Mr. Osborne to come to me and tell me he is not the man, and that there is not a thing he can do. All he has to do is to say 'Rae, I am sorry.'" They made an appointment with me at 5 o'clock, and on the way I was so much annoyed, that I said "I don't know anybody—James W. Osborne—I don't know anybody." They turned around and said, "That is what we wanted you to say."

MR. GARD. They left you then?

MISS TANZER. Yes, sir.

MR. GARD. Now, coming back to the other line of questions I was asking you, you say you talked to Mr. Hyman about your rights in the matter.

MISS TANZER. Yes, sir.

MR. GARD. And the next man you talked to was Mr. McManus?

MISS TANZER. Yes, sir; Mr. McManus, of Olcott, Ruber & McManus, I think it is.

MR. GARD. What did you talk with him about?

MISS TANZER. Not very much. Mr. McManus I called up and made an appointment with him for half past 5. We were very busy

and I could not leave the factory. He said he would wait for me. I went to Mr. Hyman and Mr. Hyman said, "Well, now, we are not domestic-relations lawyers"—I think that is what he said—"but if you want me to, I will go and speak to Mr. Osborne," and I said—he said "We don't take any cases like this," and then I thought well, as long as he does not take any cases—he said, "We do not take any of these cases." That is what he said to me. He did not mention about arresting him at all. I said, "Suppose he takes me and puts me in an insane asylum"? He said, "I will tell you what I will do."

Mr. NELSON. Who is this you are speaking of now?

Miss TANZER. Mr. Hyman. He said, "I will send my partner to Mr. Osborne to speak to him and see whether he will listen to him." I think I said, "I will let you know later." I never went back to him.

Mr. GARD. You never went back?

Miss TANZER. No, sir.

Mr. GARD. Then you went to Mr. McManus?

Miss TANZER. Yes, sir.

Mr. GARD. Who told you about him?

Miss TANZER. I read about him in the papers.

Mr. GARD. You just read about him in the newspapers and went to see him?

Miss TANZER. Yes, sir.

Mr. GARD. How soon after you left Mr. Hyman did you go to Mr. McManus?

Miss TANZER. About a week afterwards, I think.

Mr. GARD. About a week?

Miss TANZER. Yes; it must have been a week afterwards.

Mr. GARD. What reason had you for going to see Mr. McManus?

Miss TANZER. I thought he would help me out of it.

Mr. GARD. Did you have, at that time, in mind bringing suit against Mr. Osborne?

Miss TANZER. No, sir; I wanted him to speak to me and say he would not do anything.

Mr. GARD. Your idea was to get Mr. Osborne to see you and say he would not do anything?

Miss TANZER. Yes, sir.

Mr. GARD. In other words, you were frightened about something he would do?

Miss TANZER. Yes, sir.

Mr. GARD. You yourself did not intend to do anything?

Miss TANZER. No sir.

Mr. GARD. How long did you speak to Mr. McManus?

Miss TANZER. Not very long. I asked if he would take the case against him, and he said no.

Mr. GARD. Did you tell him the story of your relations with Mr. Osborne?

Miss TANZER. Yes, sir; just a little ways. I told him I met him and he told me he was Oliver Osborne, and I knew he was James W., and about the detectives, and he kind of described him and I said, "Yes; that was he." He said, "Well, you see, Mr. Osborne and I were in the same district attorney's office, and I can not very well

take the case, but I will speak to my partners." He said, "Call me up at 10 o'clock." It was he that sent me to Max Steuer.

Mr. GARD. Mr. McManus sent you there?

Miss TANZER. Yes; I said, "If you will not take the case is there not somebody who will protect me?" He said there is a lot of lawyers in New York. He mentioned Max D. Steuer and mentioned Grossan, something right in the same building with James W.—Horace Grossman, and Mr. Morehouse. He wanted me to go to him. He said, "You go to him and call me up the following morning and I will speak to my associates and see if they will do anything." When I called him the next morning, he said, "No; we can not do anything." I asked if he would give me the names of any other lawyers. He said he was very busy. He asked me to call him in 10 minutes or half an hour. I did not call him any more.

Mr. GARD. You did not call Mr. McManus the second time?

Miss TANZER. No, sir.

Mr. GARD. How soon after you called on Mr. McManus did you call on Mr. Steuer?

Miss TANZER. It was the next day or two days afterward. I know it was—I think it was about February 28 or 29.

Mr. GARD. Did you ask Mr. Steuer to bring a suit or case in court for you?

Miss TANZER. No, sir; I did not mention that at all. I told him my story; I did not talk about suits at all.

Mr. GARD. You did not?

Miss TANZER. No, sir; I did not know about suits. I told my story and asked if there was nobody who would protect me and he said yes there was a plenty. I described Mr. Osborne and he said, "Well, you go around." I said, "I have not seen him for a long time." He said, "You go around to his office and wait for him," or he may have said, "See if you can see him." I left Mr. Steuer's office about half past 5 and I went right to the building where James W. Osborne had his office, and saw him and some other gentlemen coming out of the office and I recognized him.

Mr. GARD. Was that the man you had known as Oliver Osborne?

Miss TANZER. Yes, sir; I went down and I tried to follow him, but it seems I did not want to get in the same elevator and lost track of him. I called Mr. Steuer up at his house that evening to tell him I saw him and he said to me, "You call me to-morrow morning and I will tell you what I can do." I called him the next morning—the next evening it was—he said, 4 o'clock in the evening, he said, "Well, I called him up, but I could not get him, could not get into communication with him. He would not listen to me," or would not answer the call or something to that effect. He was going to hang up the receiver, and I said, "Can't you tell me anybody I can go to," and he said, "Yes; you go to Slade & Slade and they will protect you." I went to Slade & Slade the same evening. When I got into the telephone booth to telephone to Slade & Slade—it was half past 5 or quarter after 5—there were three detectives in the telephone booth with me. I did not know that until—

Mr. GARD. Where did you telephone from?

Miss TANZER. I wanted to telephone from my place of business, but the wire was busy. Mr. Farrington was telephoning on the wire.

Mr. GARD. You said there were three detectives in the booth; where was that?

Miss TANZER. I went across the street to a public booth. In fact, I did not want anyone to hear me calling up anybody—not that they objected in the least—and I noticed one man get into one booth and another in the other booth, and I never knew I was followed. I got the number and called up Slade & Slade, and Mr. Slade said he would wait for me. I asked him if he would take the case against James W. Osborne, and he said, "Yes; if it is right; come down," I got down, I think, about quarter to 6 or 6 o'clock and told them my story.

Mr. NELSON. Told whom?

Miss TANZER. Dave Slade. No; when I got there I asked if they would take the case against James W. Osborne and Dave said, "Yes; I would take a case against the President of the United States if I knew he was wrong." Those are his words. I started to tell the story and he said, "Shall we arrest him?" He said, "We can hold him under the Mann Act," and I said, "No, indeed." He did not worry about me.

Mr. GARD. You say he never worried about you?

Miss TANZER. No, sir; he did not worry about my being arrested. He said, when I told him about it—he said, "We will have to bring suit," and I, of course, consented.

Mr. GARD. What kind of a suit did he state he would bring?

Miss TANZER. A civil suit.

Mr. GARD. For what?

Miss TANZER. For breach of promise.

Mr. GARD. Breach of promise for marriage?

Miss TANZER. Yes, sir.

Mr. GARD. Before that you did not think about the suit?

Miss TANZER. No, sir.

Mr. GARD. I understood you to say, from your evidence, you had not told Mr. Hyman or Mr. McManus or Mr. Steuer there was any breach of promise of marriage?

Miss TANZER. Yes, sir; I told them that he promised to marry me.

Mr. GARD. Did you tell Mr. Hyman that about the suit?

Miss TANZER. Yes, sir; my letter all showed it, that he promised to marry me.

Mr. GARD. What I am trying to get at is whether you instructed any other lawyers to bring suit for breach of promise.

Miss TANZER. I don't think so.

Mr. GARD. The first suggestion David Slade made to you, after you had apparently finished your story, was that he be arrested under the Mann Act?

Miss TANZER. Yes, sir.

Mr. GARD. That is, going over into New Jersey with you outside of the State for immoral purposes?

Miss TANZER. Yes, sir.

Mr. GARD. And you said you did not want him arrested for that; you would not permit it, and after that David Slade—

Miss TANZER. No, sir; David Slade said, "I will call him up and speak to him and see what he will do about it." I was wrong about that.

Mr. GARD. We want you to be right. Take your time.

Miss TANZER. He said he would call him up; that he thought he should be made to pay for the harm he had done, but that he would call him up and speak to him.

Mr. GARD. Now, just go along slowly and be quiet and try to remember as well as you can, because we want the truth of this, and if you go along slowly and carefully I think you will be all right. The first suggestion that he made to you was to arrest him under the Mann Act, and you said you did not want that, and would not permit it.

Miss TANZER. Yes, sir

Mr. GARD. And then he said he would call him up because he ought to be made to pay for the harm he did?

Miss TANZER. Yes, sir; he would speak to him for fooling me. I do not know whether he said "made to pay," but he would call him up and speak to him.

Mr. GARD. For fooling you?

Miss TANZER. For telling me he was not married, and taking me to this place. He was a married man, and had told me an untruth, and he was a coward, or he would not have told me that.

Mr. GARD. What occurred then?

Miss TANZER. He did that at several appointments. I remember one time he should have come at quarter to 8 or quarter after 8 and he did not come.

Mr. GARD. Were you there?

Miss TANZER. No, sir.

Mr. GARD. You do not know about that, then?

Miss TANZER. No, sir; but they told me.

Mr. GARD. After you went to Slade about this offer, did you make any attempt to call on Mr. Osborne and talk with him?

Miss TANZER. No, sir; not after I went to his office. I was scared of him.

Mr. GARD. Did you go to his office to see him?

Miss TANZER. When?

Mr. GARD. After you talked with Slade.

Miss TANZER. No, sir.

Mr. GARD. Did Mr. Slade tell you you ought to be sure to know him and to go to his office and see him?

Miss TANZER. I was sure he did not have to tell me that.

Mr. GARD. Did he tell you that?

Miss TANZER. Yes, sir; he asked me, and I gave him all the facts.

Mr. GARD. Did he tell you you should go to Mr. Osborne's office and see him?

Miss TANZER. No, sir; he was trying a case in one of the courts—I think the supreme court, part 7—and I was to go down the next day to see him. I was busy—

Mr. NELSON. You say, "go see him"—who?

Miss TANZER. James W.—to see if he was the man. I did not go, but my sister went down and saw him, and he said—no sooner he saw her in the court room than he could not speak and turned around—

Mr. GARD. With whom did your sister go to the court room?

Miss TANZER. By herself—no; a clerk from Mr. Slade's office went there with her.

Mr. GARD. The clerk went there to show her to the door and into the court room?

Miss TANZER. Yes, sir.

Mr. GARD. Which sister was that?

Miss TANZER. The older sister—Dora. He did not think I would have to identify him.

Mr. NELSON. Identify him?

Miss TANZER. Yes, sir.

Mr. NELSON. Mr. Osborne saw her?

Miss TANZER. Yes, sir; my sister said he saw her and turned around and kind of could not talk. It seems it was near the end of the case and he could not get out—he could not get out and fly down the steps quick enough. She went to Slade's office and said she saw him.

Mr. GARD. When did you come back to Slade's office after you went there the first time?

Miss TANZER. After he ignored Mr. Slade's calls, and then he started proceedings—

Miss TANZER. Yes, sir.

Mr. GARD. Did you know what the proceedings were when you started them?

Miss TANZER. Yes, sir.

Mr. GARD. What were they?

Miss TANZER. Breach of promise suit, I think—\$50,000. He said he should be made to pay. He said he thought maybe he would come around and speak to me, or speak to Mr. Slade and call him up, because he did not think he would want any proceedings or any notoriety. He called him up and said he did not want any notoriety, and I did not either, and it would be best to come to Mr. Slade and meet him; but, of course, he ignored our communications.

Mr. GARD. Did Mr. Slade say to you if you would bring this suit against him that that would bring Oliver Osborne around, and that he would come to see you and settle with you in some way?

Miss TANZER. Yes, sir; something like that. He thought he ought to be made to pay for what he did to me.

Mr. GARD. And did he say that if you brought this suit against Oliver Osborne he would be made to pay?

Miss TANZER. No, sir.

Mr. GARD. Who suggested you bring the suit in the amount of \$50,000?

Miss TANZER. Who suggested it?

Mr. GARD. Yes.

Miss TANZER. I do not know. I did not say \$50,000, I know, because I thought that was a terrible amount of money; no, I did not know about the \$50,000; but I knew he was suing for that.

Mr. GARD. Did you know about the amount of money you sued for?

Miss TANZER. Yes, sir; \$50,000.

Mr. GARD. You say you did not suggest that amount?

Miss TANZER. No, sir. I think Mr. Slade suggested more.

Mr. GARD. How much did he suggest?

Miss TANZER. I think he said \$100,000.

Mr. GARD. What did you say to that?

Miss TANZER. Finally it was \$50,000, I know.

Mr. GARD. Anyhow, you know when the suit was started it was for \$50,000?

Miss TANZER. Yes, sir.

Mr. GARD. You think Mr. Slade said to you that if the suit was brought that Mr. Osborne would come around and settle it?

Miss TANZER. No; that he would come and see me. He did not say anything about settling.

Mr. GARD. Would come and see him?

Miss TANZER. Yes, sir; he would speak to him. He did not think he would have a suit brought against him. That is what it was.

Mr. GARD. His idea was if Osborne knew the suit was to be brought against him he would come and see Slade and avoid the suit, because he would not want the suit brought against him?

Miss TANZER. He did not want the notoriety, and I did not either. I told him that distinctly.

Mr. GARD. Did you make any arrangement with Mr. Slade at that time about the payment of any lawyer's fees?

Miss TANZER. Well, no. He said he would not take any money unless he won the suit for me. Then I was to pay him.

Mr. GARD. How much?

Miss TANZER. I do not remember now. I do not know whether he said a third or 50 per cent.

Mr. GARD. Fifty per cent?

Miss TANZER. I do not know whether it was a third or 50 per cent. He said I would pay him at the end.

Mr. GARD. Was the arrangement that he was to get a certain per cent of the money you got?

Miss TANZER. Yes, sir.

Mr. GARD. You do not know whether it was a third or a half?

Miss TANZER. I think it was a half, and he was to pay all expenses.

Mr. GARD. He was to get half of the money and pay all expenses?

Miss TANZER. Yes, sir; it was I that consented for him to bring the suit after I refused to have him arrested.

Mr. GARD. As I understand it now, Mr. Slade suggested he be arrested, and you would not hear to that?

Miss TANZER. He wanted to bring a criminal suit, and I would not think of it.

Mr. GARD. And then it was suggested that the best thing to do was to file a suit, and that Osborne would come around and see Slade and avoid any notoriety in reference to the suit?

Miss TANZER. Something to that effect—no; he said he would fight him in open court.

Mr. GARD. The idea was Slade said Osborne would come to him and avoid the notoriety of the suit?

Miss TANZER. He thought he would; but that he would telephone him before he brought any suit, and he called him three times, and he ignored him, and he filed the suit; otherwise he would not have done it.

Mr. GARD. This suggestion that was made by Slade to bring the suit at this time—this was the first time any lawyer told you what kind of a suit to bring?

Miss TANZER. No, sir; Mr. Hyman said that would be the only suit to bring. Mr. Hyman said he ought to pay for his folly—for

what he had done. I do not know what Mr. McManus said. I think it was a civil suit or suing Mr. Osborne and seeing what he would do.

Mr. GARD. I understood you said your idea in seeing the other lawyers was to get advice to protect yourself?

Miss TANZER. Yes, sir; but they said the suit was the only thing to protect me.

Mr. GARD. But at that time you had no idea of bringing the suit?

Miss TANZER. No, sir; absolutely not—God knows not that, I know. It has brought on terrible trouble with me.

Mr. GARD. Now, we have gotten down to the beginning of the suit. The suit was for \$50,000 and was brought in your behalf by Mr. Slade, of the firm of Slade & Slade?

Miss TANZER. Yes, sir.

Mr. GARD. Now, when was it that you were arrested by the Government?

Miss TANZER. Why, Mr. Slade sent James W. with the summons, I think, on March 16—no—yes; it was March 16. I went to see the Slades on March 5. I think that they served them with the summons March 16, and I went down to Mr. Slade and he told me he had served them and that was all. I let it go at that. I let him serve them. The next day I got up—no; I went to Mr. Farrington. I told Mr. Farrington all my story. He telephoned Arthur Hyman, and he was willing to go to Mr. Hyman, but business kept him from it, and I went myself. He even suggested seeing his own lawyer to see what to do. I was scared in the meantime that James W. would nab me on the streets. I was always under that impression.

Mr. GARD. Nab you on the street?

Miss TANZER. Yes, sir; I was always afraid of that. He could do that easily. I told him I must have some one to protect me. Whom could my sisters go to if I were arrested?

Mr. CARLIN. I thought you said you were anxious to see him?

Miss TANZER. No—what did you say?

Mr. CARLIN. I thought you said you were anxious to see him, and now you say you were afraid you would see him.

Miss TANZER. I do not understand you.

Mr. GARD. What Mr. Carlin is getting at is you said you were afraid that he would nab you on the street.

Miss TANZER. No; not he. He would have some one else to do it.

Mr. GARD. You mean have some officers?

Miss TANZER. Yes, sir.

Mr. GARD. I understood you to say before you did want to see him—you did want to see Mr. Osborne?

Miss TANZER. Yes, sir; I did see him.

Mr. GARD. But I mean you already went to see him, and you wanted him to come to see you.

Miss TANZER. Yes, sir; I wanted him—I did not want to go to his office.

Mr. GARD. Where was it you did see Mr. Osborne?

Miss TANZER. That I did see him?

Mr. GARD. Yes.

Miss TANZER. Coming out of his office.

Mr. GARD. I do not mean that time. I mean before that, when you were out with him—did you have any definite place to come to?

Miss TANZER. He came to my house.

Mr. GARD. He came to your house?

Miss TANZER. Yes, sir; he always called for me.

Mr. NELSON. How many times did he call at your house?

Miss TANZER. Eight or nine times.

Mr. NELSON. In the presence of your sisters?

Miss TANZER. No, sir; I used to meet him at the circle—the subway station, instead of coming to the Bronx; it was so long. Instead of that I used to meet him for dinner right from business, so he would not have to travel all that way. That was his suggestion. Other evenings he used to call at the house.

Mr. GARD. Do you remember the time you were arrested on this charge of mailing this letter?

Miss TANZER. Yes, sir.

Mr. GARD. When was that with respect to the time the suit was brought?

Miss TANZER. Two days, I think, after he was served—three days after—March 19. I went down to see Mr. Slade. He had sent for me or something to that effect, and when I got there Mr. Slade was out trying a case, and I sat in one of the libraries, and two gentlemen came in and asked for Mr. Slade. They thought they were reporters and the stenographers said he would not be back until 5 or half past 5 and they waited until 4 or maybe half past 3. They made sure I could not get any bail, and Mr. Slade did not get back until half past 5, but I was in the other room, and all I could hear them say was: "We are officers of the United States court. We have a warrant for the arrest of Rae Tanzer, and we want you to produce her." Of course, Mr. Slade got on the wire and tried to get bail for me and they called Mr. Farrington. I do not know whether they got him or not. I think he had gone. Well, they tried to get bail all over and they could not, and Mr. Slade had a sister, a little blonde. They thought she was I and they wanted to arrest her. They said no; and they said: "Produce Rae Tanzer." He said, "I will do so." They waited, and in the meantime they tried to get bail so I would not be arrested. They produced me when they found they could not get bail. I went to the district attorney's office and Mr. Wood and Mr. Hershenstein were there. Mr. Slade asked them over the telephone if they would not allow him to keep me in his custody overnight; that he would take care that I would be there in the morning and that they would have no trouble, and that he did not want me to go to the stationhouse overnight and he would take all the responsibility; but Mr. Marshall would not listen to it. He could not have it and Mr. Slade came to me and said: "Little girl, come with me; don't get scared. Come along and we will try to get bail for you, if they will wait for me."

They got to the district attorney's office and Mr. Wood was there and Mr. Hershenstein. He pleaded with them and begged them not to take me. He said he would try to get bail and they said, "No, we have no judge," and Mr. Marshall would not listen to it. He wanted \$5,000 and Mr. Slade said he did not understand why they put me under a \$5,000 bail. He asked what—he even suggested my staying in the district attorney's office, and Mr. Wood said he would not stay with me, and Mr. Hershenstein said, "I will not stay with her," and that I would have to go. I called up my home and said I would not be home; that I would go to Mr. Slade's.

I did

not want them to worry about me, but I just imagined how those girls would feel. They did not quite understand it, but they thought it—they kind of thought it was that.

Mr. GARD. You lived with your sisters?

Miss TANZER. Yes, sir; we kept the home after my mother died.

Mr. GARD. How many were in the family?

Miss TANZER. Four.

Mr. GARD. Three sisters and yourself?

Miss TANZER. Yes, sir.

Mr. GARD. You retained your home after the death of your mother?

Miss TANZER. Yes, sir; but got smaller quarters.

Mr. GARD. When did you have your hearing? I understand they refused to give bond. When did you have the hearing?

Miss TANZER. Oh; the hearing was the 24th.

Mr. GARD. The 24th?

Miss TANZER. Yes, sir.

Mr. GARD. Were you confined up to the 24th?

Miss TANZER. No, sir.

Mr. GARD. When did you get out?

Miss TANZER. They took me to the stationhouse. They said they did not have any woman—or something to that effect—they did not have any matron, and they said they did not have this matron, and could not take me, and they then took me to another place. I think it was on Greenwich Street. On the way over two of the men with me—one of them had a picture of James W. and said, "Do you know him?" I said, "I know nothing." They were very lovely until I noticed three or four men following me, and I did not know what it was about. They were photographers and I got very mad and said, "Why do you have all these men with me?" And they said, "Now, you just come along and say nothing." "Well," I said, "indeed, I will not have it." I said, "Why have these men"—I did not know what they were—well, as we got into the entrance of the police station, I saw a flash go up and I got scared. I knew they had taken my picture, but what could I do. I was in the mercy of their hands. I said, "Why did this happen?" You see, he had all this arranged.

Mr. NELSON. Who is "he"?

Miss TANZER. I supposed the district attorney had his reporters ready and he fixed my arrest, and they left me there that evening.

Mr. CARLIN. How long did you stay in jail?

Miss TANZER. One night; they tried to get bail, but they could not; they tried to get it.

Mr. GARD. Who went on your bond?

Miss TANZER. Mr. Farrington.

Mr. GARD. Your employer?

Miss TANZER. Yes, sir.

Mr. GARD. You were not rearrested until you had the hearing on the 24th?

Miss TANZER. Yes, sir.

Mr. GARD. Now, we have gotten down to the 24th of March, 1915. I understand at that time you had a hearing before the commissioner?

Miss TANZER. Yes, sir.

Mr. GARD. Did you have a hearing or waive examination?

Miss TANZER. We had a hearing.

Mr. GARD. Was Mr. Slade your attorney at that time?

Miss TANZER. Yes, sir.

Mr. GARD. Which one of them?

Miss TANZER. David Slade.

Mr. GARD. This commissioner bound you over then in the sum of \$5,000?

Miss TANZER. Yes, sir.

Mr. GARD. And you gave bond at that time?

Miss TANZER. Yes, sir.

Mr. GARD. Who became your bondsman?

Miss TANZER. Mr. Harold Spielburg.

Mr. GARD. Mr. Farrington did not go on your bond?

Miss TANZER. He refused; I will tell you why. He was under the impression that they would try to evade my bail—try—he imagined this, that after they did all this sort of thing and arrested me, he thought probably they would steal me or kidnap me before the hearing on the 24th.

Mr. GARD. In other words, he——

Miss TANZER. He did not want to lose the \$5,000.

Mr. GARD. He was afraid that something would happen to lose the bond and therefore could not go on the bond?

Miss TANZER. Yes, sir; he said that, but I did not know he was going to withdraw until the day of the hearing.

Mr. GARD. Now, coming down particularly to this matter in relation to Mr. Marshall, how did you happen to get this new bondsman, Mr. Spielburg?

Miss TANZER. He was on the first bond—Mr. Farrington went there and had—it was through him the bond was issued. He is a bonding agent or whatever you call him. Mr. Farrington got the first bond, and, of course, my brother went to him for the second. He came to the court room and said he would give bond. He told Mr. Farrington and Mr. Evans.

Mr. GARD. Was Mr. Spielburg acting as your lawyer?

Miss TANZER. No, sir.

Mr. GARD. Is he now acting as your lawyer?

Miss TANZER. He is supposed to be.

Mr. GARD. Did he become your lawyer after Slade & Slade were indicted?

Miss TANZER. Yes, sir.

Mr. GARD. Did you take any action releasing Slade & Slade from acting as your attorneys?

Miss TANZER. Yes, sir.

Mr. GARD. What was that?

Miss TANZER. I do not know. Mr. Spielburg had it done.

Mr. GARD. Do you know anything about it?

Miss TANZER. I know they made me sign a paper.

Mr. GARD. Who?

Miss TANZER. Mr. Spielburg, releasing Slade & Slade so he would be my attorney.

Mr. GARD. How did you happen to do that?

Miss TANZER. He said he would protect me—that is, the night he sent for me and I recanted at the time.

Mr. GARD. I don't understand that.

Miss TANZER. I will tell you. He said he would go on my bond.

Mr. GARD. Mr. Spielburg said that?

Miss TANZER. Yes, sir; Mr. Farrington put up the first bond, and he wanted our bank books—my sister's and mine—I had the books with some little amount in it—\$300—and another sister of mine had an account, and my elder sister at that time. They would give anything, you know. He asked for these books. I do not know why he wanted them. Mr. Farrington had put up the bond the first time, and of course, when he withdrew it, he took what was left of the bank books and took the bond, and I think my brother signed a little over his life-insurance policy.

Mr. GARD. Signed them over to Spielburg?

Miss TANZER. Yes, sir; the time Mr. Farrington withdrew from the bond. The day after the hearing, on the 25th or Friday, he brought down my bank book, which he did not have, and he told my nephew to tell me—I don't remember—I think he called me up at my brother's home. We had been hounded out of our home at Pinehurst. They sent detectives to our places and sent them to the agent of the house and said, "What kind of people have you got there?"—that we were blackmailers and bad women, we could not get a house without references. These detectives did that. That is how they hounded us out of our homes. We had to give up our homes and give our things away until we were left with practically nothing—just a few little things to keep the home together, because we did not want to board. It seems every house we went to after that the landlord was asked what kind of people they had, and he said he found them very nice.

Mr. GARD. You spoke a little while ago about recanting. What did you mean by that?

Miss TANZER. Changing my mind.

Mr. GARD. Tell us about that.

Miss TANZER. My interview—after my interview I went to Mr. Spielburg with the books, and Mr. Spielburg said to me there that he would help me, and I told my nephew to tell Mr. Spielburg to come to my home, and my nephew came back and said, "No; Mr. Spielburg wants to see you at 7 o'clock." I had been sick all day. I was worrying over the thing and wanted to know the best way to die, but it seems I was a coward and could not die. I went to Mr. Spielburg. Before I knew it he turned around and said to me, "Is he the man?" I said, "Yes." He said, "No; he is not the man, is he?" I said, "No." I was so weak I did not know what I was doing. He sent for a friend of his, Dr. Middleman, and his wife and his secretary was present. He would not let me make a statement unless he had these four people. They came, and he had me tell the story, and all through it he would say, "Is he the man?" And I would say, "Yes." The next minute he would say, "Is he the man?" I would say, "No." He said, "You are in terrible trouble."

Mr. CARLIN. Why did you say "no"?

Miss TANZER. Well, while waiting for the bond in the commissioner's room—the commissioner was very nice. I did not have anything to eat that day there, and he said he would take me to lunch, but I would not go. He said he would go to the marshal and would protect me. He told them that he would take care of me; that I would

not run away; that I was safe. He had me sit there while he was trying another case, and I listened to a certain case that he was trying. James W. walked into the room while I was waiting for the bond. He was haggard and looked awful. I looked at him and said, "My God, he looks different." I turned to my sister and said, "Dora, is that Oliver?" She said, "Yes, indeed." I said, "Oh, my God, look at him." She said, "He is a good actor." I said, "Indeed he is." She said, "You are nervous and tired." He sat there and said, "Why doesn't she come to me?" He then left. That kind of put me under a strain.

Mr. CARLIN. He said why didn't you come to him?

Miss TANZER. He said it to Commissioner Houghton. The commissioner turned around and said, "Jim Osborne is my friend and has been for 25 years." He sat there and never said it was awful or anything to that effect. I said, "If you think I am a black-mailer"—I asked him if he thought I was a blackmailer, and he said, "No," and would not say anything more.

Mr. CARLIN. Who was that—Jim Osborne?

Miss TANZER. No; Commissioner Houghton.

Mr. CARLIN. Why did you ask your sister if that was Oliver?

Miss TANZER. He acted queer and was looking so bad.

Mr. CARLIN. He did not look like the same man?

Miss TANZER. Yes, sir; but he—there was a doubt that came to my mind that he was not, and I was under a terrible strain, and I said to my sister that I did not think he is, but she says, "Oh, don't say anything more. You do not know what you are talking about." After that he went out.

Mr. CARLIN. When you saw him there, there was a doubt came in your mind as to whether he was the same man or not?

Miss TANZER. Yes, sir.

Mr. CARLIN. Did he look like the same man?

Miss TANZER. Yes, sir; but he looked very much worn out. He is a good actor, because I have studied him right out.

Mr. GARD. How many times before that had you seen this man you called Oliver or James W. Osborne?

Miss TANZER. Before that time?

Mr. GARD. How many times before you said you did not know whether it was he or not?

Miss TANZER. I saw him at the hearing for two days, and there was not a doubt in my mind.

Mr. GARD. About how many times before that had you been with him?

Miss TANZER. Oh, about eight or nine times. I was out with him eight or nine times.

Mr. GARD. When you say you were out, where did you go?

Miss TANZER. To the theater and restaurants.

Mr. GARD. From your home?

Miss TANZER. Yes, sir; and I was with him twice to hotels.

Mr. CARLIN. I did not catch that.

Miss TANZER. Twice with him to the hotels. Once in Plainfield and once in New York City. That is all I was with him.

Mr. GARD. Those were the two times you occupied the same room?

Miss TANZER. Yes, sir.

Mr. GARD. On any other occasion did you have intercourse with him except those two times?

Miss TANZER. No, sir; just those two times.

Mr. GARD. The other times you went to the theaters or restaurants with him?

Miss TANZER. Yes, sir.

Mr. GARD. Now, coming back to this time when you had some doubt about who it was, was that the last day of the hearing?

Miss TANZER. Yes, sir.

Mr. GARD. When you said to your sister that you did not know whether that was he or not, and you said, "My God, how he looks"—

Miss TANZER. Yes, sir.

Mr. GARD. That was the last day of the hearing?

Miss TANZER. Yes, sir.

Mr. GARD. When was it you made the statement to Mr. Spielberg?

Miss TANZER. The next day.

Mr. GARD. The next day?

Miss TANZER. Yes, sir.

Mr. GARD. And did you sign any statement?

Miss TANZER. Yes, sir; but first of all—

Mr. GARD. Did they leave a copy of it with you?

Miss TANZER. I have one that he gave me.

Mr. GARD. Have you got it with you?

Miss TANZER. Yes, sir; Mr. Friedman has it.

Mr. GARD. We would like to see it.

Mr. FRIEDMAN. Do you waive the privilege?

Miss TANZER. Yes, sir.

Mr. FRIEDMAN. I would like to have that appear in the record.

Mr. GARD. I understand that you agree that Mr. Friedman let us see the statement?

Miss TANZER. Yes, sir.

Mr. GARD. This is the statement you say you signed at the time?

Miss TANZER. No; he has the statement that I signed.

Mr. NELSON. This is a letter to you?

Miss TANZER. Yes, sir.

EXHIBIT No. 33, MARCH 8, 1916.

MISS RAE TANZER: I am satisfied to attempt to help you out of the difficulty you got yourself into, because I believe that you were honest all the way through.

I am likewise satisfied that your attorneys, Slade & Slade, and the other witnesses were honestly mistaken. I will not tell anything you told me, unless I have the absolute assurance of the authorities that nobody connected with your case will be hurt in any way.

New York, March 27, 1915.

(Signed:)

HAROLD SPIELBERG.

Mr. FRIEDMAN. If the committee will pardon me, this was given to Miss Tanzer at the time she made the statement, and prior to which time certain statements were made to her by Mr. Spielberg, which, I suppose, Miss Tanzer will bring out. This was given to her at that time.

Mr. CARLIN. This is not the statement she made in which she said that James Osborne is not Oliver Osborne?

Mr. FRIEDMAN. He has that statement.

Mr. CARLIN. I understood she said she had that.

Miss TANZER. I do not think I said that it was not he.

Mr. GARD. Now, Miss Tanzer, we want you to go slowly. There is no reason to get frightened. You have told us a while ago of the interview you had with Mr. Spielburg, when he called in some other persons. Who were they?

Miss TANZER. Yes, sir; I went there and this doctor was there, and he said he would not listen to me at all.

Mr. GARD. What doctor?

Miss TANZER. Dr. Middleman and his wife. I sat there, and all of a sudden, he said, "Did you have anything to eat?" I said, "No; I had some grapefruit and coffee."

Mr. GARD. When?

Miss TANZER. The same day. I had not had another thing for two days.

Mr. GARD. When was this statement made?

Miss TANZER. At 7 o'clock.

Mr. GARD. How long were you in the conference?

Miss TANZER. Until 2 o'clock the next morning. Then Dr. Middleman said to Mr. Spielburg: "You had better give her something to drink." I said: "I will have some water." He said: "No; give her milk."

Mr. GARD. You said you wanted what?

Miss TANZER. Water; and they gave me a glass of milk. I kept on talking. He would say: "Is he the man?" I would say: "Yes, indeed." "Now, are you sure," he said; and I would say, "No."

Mr. GARD. Why did you say that?

Miss TANZER. There was a doubt. I did not know what I was doing. Then all of a sudden he said to me, "Well, you know by saying he is not, everything thing will be all over."

Mr. NELSON. All right?

Miss TANZER. Yes, sir. "Everybody is hounded. Look at the newspapers and they are after you," and he said, "Why not let me protect you?" So I said, "No; I have Slade & Slade." He said, "Yes, but I could do much more for you." He said, "Say he is not the man and give me that in writing and everything will be all right. You will not have to worry. It will be all over soon." I was so anxious, being hounded by the newspaper reporters and detectives after me, I said, "Well, I will say yes; maybe he can do something for me." He asked me to come into the other little room and I sat there a little while and he said, "Are you going to sign the paper?" I said, "No." Then I turned around and said, "Will you take care of everybody?" I said, "Will you see there is no harm done to Slade & Slade or my sisters?" I also said, "You will see there is no harm done to Mr. Safford? I do not care what they do to me." I told him they could do anything they wanted to with me, but was the rest of them all right. He said, "Yes; I will help every one." He said, "Well, you sign it." That is how he got me to do it. He kept me there until 2 o'clock trying to get me to sign the paper to settle it.

Mr. GARD. Who wrote out the paper you signed?

Miss TANZER. I did. He had me write the whole thing.

Mr. GARD. In your own handwriting?

Miss TANZER. Yes, sir.

Mr. GARD. Who was present?

Miss TANZER. Mr. Burnstein and Mr. Spielburg.

Mr. GARD. Mr. Burnstein and Mr. Spielburg?

Miss TANZER. Yes, sir; his secretary.

Mr. GARD. There was Dr. Middleman—

Miss TANZER. No, sir; they were not there when I signed it.

Mr. GARD. Were they there when you were writing it?

Miss TANZER. No, sir.

Mr. GARD. How long did it take you to write it?

Miss TANZER. About an hour—I wanted to write it—

Mr. GARD. How many pages did you write?

Miss TANZER. Just one page. I just asked him to help everyone and see that the thing was over. I could not stand it very long and he said he would. Then he had Mr. Burnstein write this one for me.

Mr. GARD. I wanted to get what you wrote. You said you wrote one.

Miss TANZER. I do not remember what he told me to write. I remember saying that I would say no. I told him that.

Mr. GARD. Did you write that?

Miss TANZER. I do not remember what I wrote, but I remember saying that I told him I would say “no” if he promised to help everyone of them.

Mr. GARD. Pardon me for asking the question. I do not intend to be offensive in any way, but had you been drinking that day?

Miss TANZER. No, sir; I never drink.

Mr. GARD. It was just that you did not have anything to eat?

Miss TANZER. Yes, sir; I was dazed. I would say yes or no or anything he wanted.

Mr. GARD. You have stated here in this testimony just a few moments ago that there was a doubt in your mind. Was there a doubt in your mind when you wrote that paper—as to whether Oliver was James W.?

Miss TANZER. No, sir; I was as sure as I am sitting here.

Mr. GARD. Then why did you say it?

Miss TANZER. Because he said he could help me.

Mr. GARD. You said a moment ago there was a doubt in your mind?

Miss TANZER. There was Thursday when he acted that way. He pretended. He was a very good actor.

Mr. GARD. You mean when you saw him that time?

Miss TANZER. Yes, sir; I told them the story about this Thursday, and of course he dwelt on that and kind of took that up all the time.

Mr. CARLIN. You told him the story about the doubt?

Miss TANZER. Yes, sir; and he held me on that.

Mr. NELSON. You mean Mr. Spielburg?

Miss TANZER. Yes, sir; it was about 2 o'clock when he got me to sign it and said, “Are you going to sign it?” I said, “Well, no. Will you promise to help everyone?” He said, “Yes; I will help you, certainly.” And then I wanted him to assure me again that he would help everyone, and he said, “Yes.” I said, “I don't care about myself,” but provided he got the rest safe; but I said “What will Slade & Slade say? Look how nice they have been. They have tried to believe in me,” and I said, “I can not go to

them and tell them this." He said, "It is all right, we will call Slade & Slade and tell them all about it." In the meantime he signed this paper and I went to the other room, but before he could get James W. Osborne on the telephone—after he signed the paper, he got the Sherman Square Hotel and I know all he said, and when he came out and said, "James W. is at Washington, his wife was very happy." This is all he said. I heard that. I said, "What did you do?" He said, "I just called Mr. Osborne up." Then I went home. They took me home, and the next morning sent for me very early so I would stay with them a day longer.

MR. NELSON. You understood that this [exhibiting paper to witness] was a promise of immunity for you?

MISS TANZER. I do not know what immunity means. I knew that everyone would be helped.

MR. NELSON. And he wrote that the same evening in some other room?

MISS TANZER. In front of—Mr. Burnstein wrote it and he signed it.

MR. NELSON. Mr. Burnstein wrote it?

MISS TANZER. What is that?

MR. NELSON. This is dated March 27, 1915.

MISS TANZER. Yes, sir; I got there at 7 o'clock in the evening and left at 2 o'clock the next morning. That is how the date is the 27th.

MR. NELSON. Did you read this carefully before you made the statement—before you signed it?

MISS TANZER. He got me to sign myself first, and after he got possession of that he just held onto that.

MR. NELSON. When did he give you this [exhibiting paper to witness]?

MISS TANZER. After I gave him my statement. He did not give me that first; no. After I gave him my statement he gave me that.

MR. CARLIN. Was it agreed to at the time if you signed your paper he would sign this paper?

MISS TANZER. Yes, sir; he said he would not say anything to anybody until he got the assurance—as he says there, he was promising that everything would be all right. The next morning when I got there he had just gotten off the wire. He had James W. Osborne at Washington on the telephone in the Continental Hotel. I said, "What did you call him up for?" He said, "Well, he directed me to go to Mr. Marshall and tell Mr. Marshall, and he said he would be in town that evening, that Saturday, and to meet him at the bar association; that he would not do anything without Mr. Marshall knowing about it." He went to his office and he stayed there and he left. I do not know that he went there, but he came back and told me he had. He said he was to see Mr. Marshall, and he did not want to go to the bar association. He said, "He will call me up when he wants me." After he told me the whole thing he said Mr. Marshall turned around and said, "I will call her whenever I like." I was under the impression that it would all be over by Monday. I wanted it hurried along and I begged them to call Mr. Marshall and let them say it was all right, but Mr. Marshall could not see me. He made the appointment for 11 o'clock Monday, and in the morning the papers all had the news

in them—not the recanting, but that there would be a great surprise or something to that effect—that was in the papers.

Mr. GARD. Now, tell me this: "Did you ever appear before the grand jury?"

Miss TANZER. No, sir; they would not have me.

Mr. GARD. You know, of course, what the grand jury is?

Miss TANZER. I have heard so much of it. I do not know what it is, but I have heard of it.

Mr. GARD. Did you receive any paper to go and testify before the grand jury?

Miss TANZER. No, sir.

Mr. GARD. Did you ever talk with Mr. Marshall, the district attorney?

Miss TANZER. Yes, sir; I called Monday to make a statement with Mr. Spielburg.

Mr. GARD. That is, Monday after you signed the paper?

Miss TANZER. Yes, sir.

Mr. GARD. Did you go to Mr. Marshall's office?

Miss TANZER. Yes, sir; Mr. Marshall did not see me, but Mr. Wood and Mr. Hershenstein, and I told my story from beginning to end.

Mr. GARD. Did you see Mr. Marshall, the district attorney, himself?

Miss TANZER. No, sir; he would not see me.

Mr. GARD. Did you ever have a talk with him at all?

Miss TANZER. No, sir; I never spoke to him.

Mr. GARD. You never spoke to him in your life?

Miss TANZER. No, sir; just saw him in the court room.

Mr. GARD. That was the time of the Safford case, was it?

Miss TANZER. Yes, sir; and I saw him in the hearing.

Mr. GARD. You never talked with him in the private office or the grand jury room?

Miss TANZER. My conversation was with Mr. Wood and Mr. Hershenstein and Mr. Swann—the two Federal detectives, the post-office inspectors.

Mr. GARD. You had a conversation this Monday with Mr. Wood and Mr. Hershenstein?

Miss TANZER. Yes, sir.

Mr. GARD. In this conversation, did you tell them that Slade & Slade induced you to bring the suit?

Miss TANZER. I told them as I told you.

Mr. GARD. Did you say to them that David Slade had asked you to bring a suit against Mr. Osborne?

Miss TANZER. No, sir.

Mr. GARD. Did they say to you if you would testify that they did do that, they would not press the case against you?

Miss TANZER. No, sir; when I got there they were very nice to me, and they asked me if I would have anything to eat. I said, "No;" I had just had some tea and toast. It was around 12 o'clock. I sat there and before—I asked them if Mr. Osborne would come in, I would say I was sorry for what I did. I was willing to do that, to have everything cleared, and tell him I was sorry this had happened. Mr. Wood would not let me see him.

Mr. GARD. You wanted Mr. Osborne to come in and you wanted—

Miss TANZER. I wanted to apologize to him.

Mr. GARD. You wanted to apologize to him?

Miss TANZER. Yes, sir; Mr. Osborne was outside, but they would not let me see him.

Mr. GARD. Just tell us what was said.

Miss TANZER. They said, "You saw him. What do you want to see him again for?" I said that I wanted to see him and apologize; that I made an enormous mistake and Mr. Spielburg wanted me to—I told them everything.

Mr. GARD. Everything?

Miss TANZER. I told the whole story and gave them everything they wanted. They knew I was telling the truth, until I came to Slade & Slade. Then there was an article in the newspapers that I would be granted immunity. That was before my statement, and they asked me if I would sign a waiver. They asked if I would sign a waiver for my former lawyer to speak. I did not know what a waiver was, and Mr. Spielburg explained that that meant the attorneys, the ones that I visited would be allowed to talk.

Mr. GARD. Mr. Spielburg you say?

Miss TANZER. He explained this to me.

Mr. GARD. Was he there, too?

Miss TANZER. Yes, sir.

Mr. GARD. Then, in the room, there was Mr. Spielburg, Mr. Wood, and Mr. Hershenstein?

Miss TANZER. And Mr. Mayhew and Mr. Swann.

Mr. GARD. Are they district attorneys too?

Miss TANZER. No, sir; they were the post-office inspectors who took the case, and went after everything and prosecuted the case—got the evidence.

Mr. GARD. Now, go on and tell us what was said.

Miss TANZER. I said, "Yes." Then, after he explained what the waiver meant and I said, "Yes," I said "Yes" to anything they said. I was not afraid. I signed it without a word. He said, "You know the attorneys will be allowed to talk?" I said, "Yes, indeed; I am not afraid of anything they have to say." I signed that willingly and started with the statement, and when they would not let me see Mr. Osborne—Mr. Spielburg said, "Well, little girl, you do not have to make a statement if you do not want to." I said, "Why do you say that?" I did not have sense enough to see what they were after. I should not have done that. They said if I did not want to make a statement I need not do so, but I said, "Indeed I will make the statement," and I told them everything from beginning to end, and I told them dates that they pinned me down to at the Safford trial. I thought I was right, but I did not know what it was and rattled off a lot of dates. I thought they were correct. I will not go back on what I said, but I mentioned dates that I saw him and gave the dates and the times, and when I got as far as Slade & Slade and told them about Max Steuer sending me to them, they wanted to know whether I knew Mr. Slade—knew Slade & Slade before. I said I never met them. They did not want to know if I knew Safford. I told them what Safford had said at the hotel and everything, and when I got to Slade & Slade Mr. Wood turned around and said, "Is that all?" I said, "Yes." He said, "Have you anything more?" I said, "No." He said, "You can tell us more." I said, "No, indeed; I have told you all I have to say." He said,

"What about Slade & Slade? Did you know them before?" I said, "No; Mr. Steuer sent me to them." He said, "Have you anything more to say?" They tried to keep me going and make me say something more. I said, "I can not tell you things I do not know." I said, "I do not know anything more." After that, the next day, the acted entirely different toward me; they just did not care for me, or something to that effect. They were happy when I got there, but when I left they treated me entirely different.

Mr. GARD. You went there the second day, and they did not treat you very nicely?

Miss TANZER. No, sir; the same day and they turned around and said, "That girl has some more to say." Mr. Spielburg said, "No; that is all she told me." Then he started to talk to them, and from that day he was very friendly with the United States court.

Mr. GARD. You said when they spoke of immunity you did not know anything about what they meant. Did they say anything to you about your testifying that Slade & Slade had asked you to bring this suit against Osborne?

Miss TANZER. No, sir.

Mr. GARD. And did they say to you that if you would testify that David Slade asked you to bring this suit that they would let you off?

Miss TANZER. No, sir; they would not dare say that. They kind of said, "Well, is there any more?" They wanted me to say more about Slade. They were trying—no; they did not say that.

Mr. GARD. The question is what you did say to them—what they said to you and what you said to them.

Miss TANZER. No, sir; they did not say that. They wanted as much to say it, but they could not.

Mr. GARD. You say they kept on asking you if there was not something more?

Miss TANZER. Yes, sir; and if I had finished my statement. I think they said, "Was it Slade & Slade that asked you to bring the suit?" I said, "No; I went there as attorneys," and I told them Slade & Slade wanted to have him arrested, and I would not think of it.

Mr. GARD. Did they say anything that led you to believe they wanted to involve Slade & Slade?

Miss TANZER. Yes, sir; Mr. Spielburg told me that.

Mr. GARD. What did Mr. Spielburg say?

Miss TANZER. He always used to say they did not want me but they wanted them. He evidently knew. I did not know.

Mr. GARD. You got that information from Spielburg?

Miss TANZER. Yes, sir.

Mr. GARD. Did they say anything to you about Slade & Slade having abandoned you in your trouble and about having quit your case and left you, and therefore you ought to testify against them?

Miss TANZER. I don't understand.

Mr. GARD. I mean—when you had the talk in the office, did Mr. Hershenstein say anything about Mr. Slade having quit your case and that you ought to testify against him? Did they say anything about that?

Miss TANZER. I don't remember.

Mr. GARD. Did Mr. Spielburg ever tell you that?

Miss TANZER. He said they did not know about the case and that they should not have brought it and said all those things about them; that they brought on this notoriety.

Mr. GARD. Some of us are very anxious to know about that. Just tell us again—maybe you did tell us, but at any rate, we do not understand it. Just why did you go to Mr. Spielburg?

Miss TANZER. Because he said he could help me and the Slades could not.

Mr. GARD. Did Slade send you to Spielburg?

Miss TANZER. Indeed not. The Slades did not know why I went. I was to his office Saturday morning and I said, "Well, you had better send for Mr. Slade," and he telephoned to Mr. Slade before—I wanted him to send for Mr. Slade before he went to the district attorney's office.

Mr. GARD. Before you get any further, how did you happen to call on Spielburg? Did you go to his office?

Miss TANZER. He sent the automobile for me to come there, and he kept me with him six or seven days. I was with him every day, with Mr. and Mrs. Spielburg, as soon as I recanted—from that day on.

Mr. GARD. Did you know Mr. Spielburg before?

Miss TANZER. No, sir.

Mr. GARD. How did you happen to get in the automobile and go up to his house?

Miss TANZER. He said he was going to protect me.

Mr. NELSON. But in the meantime you knew Spielburg because he was on your bond?

Miss TANZER. Yes, sir.

Mr. NELSON. You knew he was your bondsman?

Miss TANZER. Yes, sir.

Mr. NELSON. And then he offered, as your bondsman, to protect you?

Miss TANZER. Yes, sir.

Mr. NELSON. Had you lost your other bondsman before this?

Miss TANZER. Yes, sir.

Mr. GARD. What we want to know is when you first knew Spielburg—under what conditions you came to know Spielburg?

Miss TANZER. I knew him from going on the bond. My brother knew him before that.

Mr. GARD. Did your brother or anyone have you go to see Spielburg to go on the bond?

Miss TANZER. Yes, sir; and he offered to.

Mr. GARD. I understand Mr. Farrington was on your bond?

Miss TANZER. Yes, sir.

Mr. GARD. And he got off the bond?

Miss TANZER. And he got off the bond?

Mr. GARD. And the way you got to Spielburg, your brother or some one went to Spielburg to see whether he would go on your bond?

Miss TANZER. Yes, sir; he went on the bond.

Mr. GARD. That is the way you got to Spielburg?

Miss TANZER. Yes, sir; he came to the court—

Mr. GARD. Mr. Spielburg is a sort of bondsmen there in the court?

Miss TANZER. Yes, sir; but not in the United States court. They would not take his bonds there, but they did after that.

Mr. GARD. That is the way you became acquainted with Spielberg!

Miss TANZER. Yes, sir; he sent for me and said he could help me.

Mr. CARLIN. He sent for you?

Miss TANZER. Yes, sir; he sent my nephew for me.

Mr. CARLIN. And told you he wanted to see you?

Miss TANZER. Yes, sir; and I asked him to come to my home.

Mr. CARLIN. You say they would not take his bonds in the United States courts until that occasion?

Miss TANZER. Yes, sir.

Mr. CARLIN. How do you know that?

Miss TANZER. From hearing different people talk, and Mr. Burnstein told me that, and after that he nearly owned the court.

Mr. FRIEDMAN. She was there in his office three months after that.

Miss TANZER. Yes, sir; I could not get a position, you know.

Mr. GARD. In Mr. Spielberg's office?

Miss TANZER. Yes, sir.

Mr. GARD. What did he do?

Miss TANZER. He was supposed to practice law and bonding.

Mr. GARD. What did you do at his office?

Miss TANZER. Answer the telephone and did little things.

Mr. GARD. You were employed there?

Miss TANZER. Yes, sir.

Mr. GARD. Were you paid?

Miss TANZER. Yes, sir; I was not really employed. He kept me in there to divert my mind. I could not get a position. He just gave me \$5 for car fare and lunches.

Mr. NELSON. Five dollars for the three months?

Miss TANZER. For a week. I was down there—yes, I was down there two months for nothing.

Mr. GARD. That was because you thought Spielberg was a friend of yours?

Miss TANZER. Yes, sir.

Mr. GARD. And he was doing what he could to help you?

Miss TANZER. Yes, sir. I only realized after that poor man Safford was convicted, and the way they conducted the trial—I realized he was not guilty. I said, "Look at the way that old man was convicted." I became hysterical, and he said, "I will help him. They will never arrest him."

Mr. GARD. I am particularly anxious to know whether or not, in the district attorney's office, there was anything said to you to induce you to testify to something that was not true?

Miss TANZER. No, sir—what is that?

Mr. GARD. I asked if they said anything to try to get you to testify to something that was not true?

Miss TANZER. No; because everything they did was all through Spielberg. He knew everything and I knew nothing. Anything I used to tell him he would go to Mr. Marshall and tell him about it.

Mr. GARD. I mean at the time you yourself were in the district attorney's—

Miss TANZER. No, sir; they wanted to know—

Mr. GARD. Afterwards, I believe, there was an indictment returned against you and your sisters and Slade and Safford?

Miss TANZER. Yes, sir.

Mr. GARD. And Safford was tried?

MISS TANZER. Yes, sir.

MR. GARD. Did Mr. Spielberg want you not to testify?

MISS TANZER. Yes, sir.

MR. GARD. Did you testify?

MISS TANZER. Yes, sir; I went against his wishes and testified.

MR. GARD. Who asked you to testify?

MISS TANZER. I went myself; Mr. Slade did not subpoena me at all, but I testified of my own free will.

MR. GARD. That is, you offered to testify? You just said you were hysterical after that.

MISS TANZER. Yes, sir.

MR. GARD. Did you then begin to suspect?

MISS TANZER. Yes, sir.

MR. GARD. Then you thought it was your duty to testify?

MISS TANZER. Yes, sir.

MR. GARD. Did Mr. Slade ask you to go and testify?

MISS TANZER. No, sir; he did not. He just subpoenaed my three sisters. He did not subpoena me at all, but I offered to testify.

MR. GARD. I suppose you were subpoenaed there by attorneys for Mr. Safford, were you not?

MISS TANZER. No, sir; I was not.

MR. GARD. Who were the lawyers there?

MISS TANZER. Mr. Spielberg told Mr. Slade he would not let me testify.

MR. GARD. Who were the lawyers for Mr. Safford?

MISS TANZER. Mr. Runkle—I do not know his first name.

MR. GARD. You did testify in the first case?

MISS TANZER. Yes, sir.

MR. GARD. Mr. Spielberg declined to allow you to testify, but you did testify anyhow?

MISS TANZER. Yes, sir.

MR. GARD. At that time, did you testify to anything about James W. Osborne, at that time?

MISS TANZER. Yes, sir.

MR. GARD. What did you say then?

MISS TANZER. I told them everything, and when it came to my recanting—I asked Judge Hough to let me tell the story of how I recanted—and still I did not want to say that it was through Spielberg and all of his inducements—I was trying to shield Spielberg. I did not want to say anything against him because he was my bondsman and attorney, and he promised if I was ever tried, which he doubted very much, that he would have one of the biggest lawyers in New York City try me, but he was so sure I would not be tried, or anybody—I think he said if anything ever came up it would be the Slades trying to vindicate themselves. I said I would try to help them every time. He always tried to knock them and say different things against them, and I would not listen to it. Dave Slade would come and tell me things, and if I told Spielberg, it would surely go to Marshall, and be in the newspapers. It seemed they had everything covered before the trial came. Mr. Spielberg, Mr. Marshall, Mr. Wood, and Mr. Hershenstein—they were all like friends.

MR. GARD. At that time was James W. Osborne in the court room?

MISS TANZER. Yes, sir; and I did not doubt him at all.

Mr. GARD. Did you identify him at that time?

Miss TANZER. Yes, sir.

Mr. NELSON. You say that you told them everything in the case? You mean you told them the truth as you had first claimed it to be?

Miss TANZER. Yes, sir; on the stand.

Mr. NELSON. You identified him?

Miss TANZER. Yes, sir.

Mr. NELSON. Explain to us what you mean by recanting? You say you explained to them how you recanted?

Miss TANZER. Judge Hough would not let me explain. Judge Hough would not listen to me. Mr. Wood objected and Judge Hough sustained the objection. He would not let me say anything more. Whenever I wanted to explain about the letter or anything, he would not let me. They would not let anybody explain about it. It was awful the way they conducted the case. I knew the poor man would be convicted in a minute.

Mr. NELSON. That is, your true testimony did not go into the case?

Miss TANZER. No, sir; they would not allow it.

Mr. GARD. You mean the judge would not allow you to tell the circumstances of your having said it was not Osborne?

Miss TANZER. Yes, sir.

Mr. GARD. He would not let you?

Miss TANZER. No, sir.

Mr. GARD. You did, at that time, identify Osborne as being the man?

Miss TANZER. Yes, sir.

Mr. GARD. Did Mr. Slade say, "There comes Osborne now?"

Miss TANZER. Indeed not. Mr. Slade—at the Slade trial some man—I forgot his name—used to come and try to ask me things, and the next moment go and sit with James W. He was a newspaper man, but I, of course, did not know what a newspaper man was. At first I would not give the World reporters any news, and I would not say anything to them. Of course, I was sorry afterwards I did not, because I thought all I had to do was not to receive these reporters and not see them. I was told later on I should not have done this. James W. Osborne walked in, and the moment he walked in I recognized him. Of course, he pretended not to know me. Mr. Slade was talking to Milton Hirsch or somebody, and all the newspaper reporters were sitting around. They were facing me this way [indicating] and Mr. Slade came up to me and said, "Is he the man, little girl?" And I said, "Yes." He turned right around to the reporters and said, "See, she recognizes him right away." These two reporters tried to say he looked into my eyes and saw there was a doubt. The way it went I thought it was a circus. I was dumfounded.

Mr. GARD. Was this the Slade or the Safford trial?

Miss TANZER. No, sir; at the hearing when these reporters said Mr. Slade came and said, "Here is the man now."

Mr. GARD. I mean which trial; the Slade trial?

Miss TANZER. The Slade trial.

Mr. NELSON. Was this the hearing before Commissioner Houghton?

Miss TANZER. Yes, sir.

Mr. GARD. Was it the hearing before the commissioner that Mr. Slade said, "Is this the man?"

MISS TANZER. No, sir; they arrested me on March 19, and the 20th they took me before Commissioner Houghton, but we had no hearing at that time. Mr. Slade asked to have the hearing right then and there, but Mr. Wood objected. He said Oliver was to come to town that day, but he never came.

MR. GARD. What we are anxious to know is where was it and on what occasion Mr. Slade said to you, "Is this the man?"

MISS TANZER. He did not say it to me.

MR. GARD. But you just said that.

MISS TANZER. He walked in and said, "Do you recognize him?"

MR. GARD. Where was that?

MISS TANZER. In the hearing before Commissioner Houghton. It was not a hearing—

MR. CARLIN. Mr. Slade testified he did say, "Here comes James W. Osborne now."

MISS TANZER. He said that?

MR. CARLIN. Yes.

MISS TANZER. Indeed he never; he did not say it to me. All he said was, "Is this the man?" He turned to the reporters and said, "See, she recognizes him right away."

MR. CARLIN. That was the hearing before the commissioner?

MISS TANZER. No, sir; it was not the hearing. They wanted the hearing, but they put it off until the 20th—no; it was on the 24th, because I did not see him on the 20th. It was the day of the hearing.

MR. CARLIN. What is your bond now?

MISS TANZER. Five thousand. They did not add anything. They indicted me again for perjury. I do not know how many indictments I have.

MR. CARLIN. Have you the same bondsman?

MISS TANZER. Yes, sir; Mr. Spielberg asked me not to be put under any more bonds, and they said five thousand was all right.

MR. CARLIN. \$5,000?

MISS TANZER. Yes, sir.

MR. CARLIN. How much salary were you getting before this?

MISS TANZER. At Farrington's I got \$18.

MR. CARLIN. \$18 a week?

MISS TANZER. Yes, sir.

MR. CARLIN. What are you getting now?

MISS TANZER. \$7. I am just there because it is an office, and I wanted to take up stenography, and they have given me a chance to study and advance myself.

MR. GARD. What were you doing at Farrington's?

MISS TANZER. I had charge of the millinery department.

MR. GARD. Is that a wholesale millinery establishment?

MISS TANZER. Yes, sir; I was with I. Lichtenstein on West Forty-third Street for four years before I went with Farrington & Evans, and never lost any time—well, I will not say I was never home a day. They never went to get references there. They could have them any time or wherever I was.

MR. GARD. How long after you first met this Oliver Osborne was it that you went to Plainfield with him?

MISS TANZER. The next day.

MR. GARD. The next day?

MISS TANZER. Yes, sir.

Mr. NELSON. I want to ask right there a question, because you passed this over without explaining. You said something there about remembering what Safford said at the hotel, or the time you were at the hotel at Plainfield.

Miss TANZER. No, sir; he just asked me how I liked California. and I was instructed not to say much.

Mr. NELSON. Instructed by Mr. Osborne?

• Miss TANZER. Yes, sir; he said if he asked me questions just to sit down and not queer him, which I did. This was before the hearing, when Mr. Slade got Mr. Safford, and I was to Englewood. This was the day before the hearing. Mr. Slade sent for me, and I came in with my cousin and sisters, and when I got in he opened the door and said, "Do you know this gentleman?" And I recognized him. He turned around and said, "Little girl, I am so glad to see you." He said, "I came here to help you, but remember I saw the picture. The picture is very much like him, but I will not say yes until I see him face to face." Those are the only words Mr. Safford said to me. He said he would not say anything until he saw the man face to face, and, of course, the very next day he identified him and testified to the facts.

Mr. NELSON. In your testimony you expressed some sympathy with Safford—in your testimony here—because you remembered what he said to you at the hotel. You had reference to this talk about California, etc.?

Miss TANZER. Yes, sir; he was so very nice and looked to be a perfectly honorable gentleman. They said he did this or did that because Slade paid expenses—\$47—and said he was bribed. If that is all he was to get for being bribed, I feel sorry for him, but the man is perfectly honest. He said he recognized him the minute he saw him, and the moment I walked into the room he recognized me. He said, "I will see if I recognize Mr. Osborne," but he said he would not say anything until he saw him face to face.

Mr. NELSON. How did you know there were three detectives in the telephone booth?

Miss TANZER. I saw them.

Mr. NELSON. How do you know they were detectives?

Miss TANZER. The night I went to Slade's, when I made the appointment with the two Slades, I recognized them in a minute and they kind of got out and played a trick on me. The Slades noticed them and I looked at them and noticed the faces I had seen in the drug store.

Mr. GARD. I will not at this time—but possibly will later ask you to go over the entire statement of affairs with Mr. Osborne, but you said you were at Plainfield the day after you met him?

Miss TANZER. Yes, sir.

Mr. GARD. Do you remember which day it was you met him?

Miss TANZER. Yes, sir; October 18.

Mr. GARD. October 18, 1914?

Miss TANZER. Yes, sir.

Mr. GARD. Were you with him that night at any place?

Miss TANZER. No, sir; just that afternoon. I got home at 11 o'clock.

Mr. GARD. You got home at 11 o'clock?

Miss TANZER. Yes, sir.

Mr. GARD. At night?

Miss TANZER. Yes, sir.

Mr. GARD. Where had you been?

Miss TANZER. To the restaurant and theater—no, the restaurant.

Mr. GARD. What restaurant had you been to?

Miss TANZER. An Italian restaurant on Twenty-eighth Street.

Mr. GARD. Did you stay there all evening?

Miss TANZER. I got home earlier than 11. I think it was half past 10.

Mr. GARD. The next day did you meet him by appointment?

Miss TANZER. He made the appointment, and he asked for the rings he gave me. I will have to tell you the story.

Mr. GARD. Did he give you rings the first day?

Miss TANZER. It was not the ring. God knows I did not want that. It was a big ring, and my two fingers could get into that one ring.

Mr. GARD. But he gave you a ring?

Miss TANZER. Yes, sir; he put it on the table and said, "Take it. It is yours." I said, "No." He said, "Don't draw any attention; don't create a scene with the other people here." He said not to cause any excitement or attract any attention—that people were watching me. I took it and put it on my finger, but before we left I gave it back to him.

Mr. GARD. Was he drinking at that time?

Miss TANZER. No, sir.

Mr. GARD. Did he have any wine at the Italian restaurant?

Miss TANZER. No, sir; not at that time.

Mr. GARD. At any rate, you went home about half past 10, and the next day you met him?

Miss TANZER. Yes, sir; he came right to my house.

Mr. GARD. What time?

Miss TANZER. Eight o'clock.

Mr. GARD. In the morning or evening?

Miss TANZER. In the evening.

Mr. GARD. Did you go to work the next day?

Miss TANZER. Yes, sir; I was very sick the next day.

Mr. GARD. You were sick?

Miss TANZER. Yes, sir.

Mr. GARD. Why?

Miss TANZER. I did not do anything, because I did not have to. Having charge of the place, I just directed.

Mr. GARD. What was the cause of your illness?

Miss TANZER. Must I say that? Of course, being with him that made me sick. It was the first time I was ever with a man.

Mr. GARD. The first night? You were not with him the first night?

Miss TANZER. Indeed, I was very sick.

Mr. GARD. You said the first night you went to the Italian restaurant and you got home about half past 10 with Mr. Osborne and the next day you were very sick.

Miss TANZER. I was sick right along.

Mr. GARD. Now, did you have intercourse with him the first night you met him?

Miss TANZER. No, sir; the second day.

Mr. GARD. What made you sick the day after you met him?

Miss TANZER. What made me sick?

Mr. GARD. I don't understand you. You said you were sick.

Miss TANZER. I had never been with a man before that.

Mr. GARD. I understand that, but what I am trying to arrive at is—

Miss TANZER. That is what made me sick, don't you see?

Mr. GARD. You say you met him at this time and went to the Italian restaurant?

Miss TANZER. No, sir; the first night?

Mr. GARD. Yes.

Miss TANZER. No, sir; the first night he took me home. The first night he took me home. He asked me to take dinner with him.

Mr. GARD. You mean you were sick after you got home from Plainfield?

Miss TANZER. Yes, sir.

Mr. GARD. That is the first time you were with him?

Miss TANZER. Yes, sir.

Mr. GARD. You mean after you were with him in Plainfield you came back and had dinner at the Italian restaurant?

Miss TANZER. Yes, sir.

Mr. GARD. And the next day you were sick?

Miss TANZER. Yes, sir.

Mr. GARD. You did not have intercourse the first day?

Miss TANZER. No, sir.

Mr. GARD. The second?

Miss TANZER. No, sir.

Mr. GARD. How soon after that?

Miss TANZER. A week afterwards and no more.

Mr. GARD. Where was that?

Miss TANZER. In New York, at the Knickerbocker.

Mr. GARD. The Knickerbocker Hotel?

Miss TANZER. No, sir; it was a hotel where—I do not know the name—on Twenty-sixth Street.

Mr. GARD. A place called the Knickerbocker?

Miss TANZER. Yes, sir.

Mr. GARD. Where was it and when was it you say he promised to marry you?

Miss TANZER. After this all happened—Sunday. I turned around and realized what I did.

Mr. GARD. You mean after the first time you had intercourse?

Miss TANZER. Yes, sir; he said, "don't worry; I will take care of you; I will see that everything is all right, and I will marry you." He left and promised to be back at 8 o'clock.

Mr. GARD. Did he come any more after that?

Miss TANZER. Yes, sir; the next night. The night after that night. I was not dressed, and really expected to forget all about it. I recognized my mistake and thought—I realized I did not know the man. I went with him and I thought, well, I did it, and will have to stand the consequences and never expected to have him call again.

Mr. GARD. But he did call the next night?

Miss TANZER. Yes, sir; I was not dressed and was sick. I was in a kimona, and when he came he asked me to get dressed and we went to the theater around the corner and stayed out to the theater and

came back again. I met him Wednesday night, and he took me to dinner, and he had a ring made for me. It was too big for this finger [indicating] and too small for this one [indicating], and he gave me this big one back again that I had given him at Plainfield. He said, "I did not have a chance to fix it," and he made me wear it. I said, "Take it back; I will lose it." And I gave it back to him. He took it, and I never saw the little one again—the one he had made purposely for me. That is the way it went on until I traced him.

Mr. NELSON. Tell us how you first traced him.

Miss TANZER. Why, Monday night that I did not expect him to come back any more he had taken me to the theater around the corner. When we got into the hallway we sat down and he said, "Can I take you to lunch?" I said I would rather not; that I was down to the factory, and I would rather stay there and just take lunch around the corner and not see him at noon time. Then he said could he speak to me on the telephone. I said, "Yes, indeed." I had not been with Farrington & Evans very long, and I told him my telephone number was Schuyler 3011. I gave him that on the impulse of the moment, without thinking. After he left me he promised to call promptly at 1 o'clock. I went upstairs and it struck me then that I had not given him the right number, and I got the telephone directory and I looked into the book and I found it was Schuyler 1130, and I realized my mistake. I felt very badly, but I did not know what I could do. The next morning I got downtown and called up Central and asked her to give me 3011 Schuyler. I think it was Schuyler. She said to me it was disconnected and did not answer. I thought "My God, he will think I am a beat." He wanted to know if I had any other beaux, and I said I had given everyone up and I did not go with anyone. I was crazy about him. I must have been. I was honest in that. I just felt as if there was no one else but he. I gave everybody up for him. My sisters did not want me to go with him.

Mr. CARLIN. Why?

Miss TANZER. They just objected. They did not want me to go with him because they thought he was too old for me. Not that he was a different faith—that didn't make any difference with me or them—and they did not want me to go with him. They thought I could get a young fellow, and go with the ones I was going with.

Mr. CARLIN. What is your nationality?

Miss TANZER. Jewess. Then I got information and she said to me, "They are disconnected."

Mr. NELSON. Why did you call up Schuyler No. so-and-so?

Miss TANZER. Because I thought he would call that number.

Mr. NELSON. I see. You wanted to find out what he would get when he called that number?

Miss TANZER. No, sir; I wanted the operator to do me a favor. I wanted her to have the gentleman—to have Mr. Osborne—as soon as he asked for Schuyler 3011, to ask if it was Mr. Osborne, and to ask him to kindly call Schuyler 1130.

Mr. CARLIN. You wanted to give the correct address?

Miss TANZER. Yes, sir.

Mr. NELSON. Through the telephone girl?

Miss TANZER. Yes, sir; I found that the number was discontinued, and I got information and got the manager and asked her if she

couldn't do it. She said, "My dear lady, we have three or four hundred girls, and how can I tell which one of them will get the call?" I said, "Can't you tell each one?" She said it was impossible. I said it was not much and to please do that for me. I begged her, but she said she could not. She said she had three or four hundred girls in the office, and that it was ridiculous to think of it.

Mr. NELSON. How did you finally discover him?

Miss TANZER. I did not. I went home that evening and waited for him. He was supposed to be there at 8 o'clock, but never came. I thought, "Well, he thinks I lied to him and didn't want him to come again." During the day I remembered him saying he stopped at the Netherlands Hotel. Before I went with him I did not know him, but the first evening he said, "You can come to the Netherlands, and I will show you that I live there." I called the Netherlands and asked for Mr. Oliver Osborne, of Santa Rosa, Cal., and they said nobody was there by that name. I said, "Yes; he was there Saturday and Sunday." They said, "We have no one here by that name." I got my hat and coat and went into the subway and went there, thinking maybe they did not have the right information, and when I got to the Netherlands they said, "No; there was no such man there," and I described him and they said, "No; they did not know of any Mr. Osborne, but they would try to see." They looked around, but it would not work. I looked around, and in the meantime I said he said he lived at Fifty-ninth Street. I happened to walk into the New York Athletic Club—

Mr. CARLIN. You say you happened to?

Miss TANZER. Yes, sir; I thought maybe he is living there. I went there, and I said, "Is there a Mr. Oliver Osborne here," and they said, "No." They said "We have two Osbornes; one T. C. Osborne and James W., an ex district attorney." He says, "What does the man look like that you want to know?" I described him, and he said, "Yes; we have one James W., an ex district attorney, but Mr. T. C. is a short man and kind of stocky." Well, I went home that day without any information. The next day I went to—

Mr. CARLIN. But you were writing him at the Athletic Club?

Miss TANZER. Yes, sir.

Mr. CARLIN. You were corresponding with him there before you went to the club to see him?

Miss TANZER. No, sir; it was the night before.

Mr. CARLIN. You corresponded afterwards?

Miss TANZER. Yes, sir; they said that J. W. belonged to that club, and he described him as a tall, gray-mixture hair—

Mr. CARLIN. What was that address of the Athletic Club?

Miss TANZER. Fifty-ninth Street.

Mr. NELSON. Did you give a description to identify him by?

Miss TANZER. Yes, sir; he said James W. is a tall gentleman. I asked did he wear a gray suit, and he said, "Yes; sometimes." He said he did not know—that there was no Mr. Oliver Osborne. I then went home, and the next morning I got downtown very early and said, "Well, I will wait at the Fifty-ninth Street station; probably he will go to business and take the subway." I stood there a little while, and I do not know what induced me to go to the Netherlands. I went there and went right in, and I turned around to one of the bell

boys—I think it was a waiter coming out of the grill room—and I said, “Do you know Mr. Osborne?” He said, “No; but I think the head waiter could tell you something about Mr. Osborne or could give you information.” He did not say Mr. Osborne. He said, “Some information.” The head waiter came out, and I said, “Do you know Mr. Osborne?” He said, “Yes; we have a James W. that comes here once in a while with a lady friend to drink.” I said, “Do you know where he lives?” He said, “No; he comes here to drink and only eats sometimes.” I said, “Do you know where he lives?” He said, “No.” I said, “Could you describe him?” He described him. He was tall and well built and not a very young man. I thought “maybe it is he.” Then going to the New York Athletic Club—well, I thought probably if I would write there I would reach him. I wrote a letter in the Netherlands—and was waiting for the waiter to come—to Mr. Osborne.

Mr. CARLIN. What did you write in that letter?

Miss TANZER. I wrote “Dear Oliver” and addressed it to Mr. James W. and inside put “Dear Oliver,” as in all letters. “I was very sorry, and no doubt you think I was lying and got the numbers twisted on purpose, and that is why you did not come.” I tore that letter and never gave it to him, and I said I would call up the New York Athletic Club, and got in a telephone booth on Fifty-eighth Street and Sixth Avenue and got the New York Athletic Club and asked for Mr. James W., and the operator she said he was not there and had left. I was told he lived in the Netherlands. He said he lived in the Netherlands and was willing to prove he was known there. You see he was asking me to go there. I did not doubt his word and let it go at that. I would not go back with him. I went down to my place of business, and that is when I wrote this letter on Farrington & Evan’s letterhead. I wrote to state I was very sorry I had gotten the telephone numbers twisted, and no doubt he thought I was trying to fool him. I thought he would come, and I mailed the latter about 10 o’clock.

Mr. CARLIN. Would you rather not take a recess now for lunch? You have been on the stand now about two hours.

Miss TANZER. Yes, sir.

Mr. FRIEDMAN. We will meet the convenience of the committee.

Mr. CARLIN. Very well, we will take a recess at this time until 3 o’clock.

(Whereupon, at 2 o’clock p. m., a recess was taken until 3 o’clock p. m. of the same day.)

AFTER RECESS.

The committee reconvened at 3 o’clock pursuant to the taking of recess.

Present: Mr. Carlin (chairman), Mr. Gard, and Mr. Nelson.

TESTIMONY OF MISS RAE TANZER—Continued.

Mr. GARD. Miss Tanzer, there was a question suggested to the committee—I do not know whether you answered it or not—and that is to tell us the circumstances of your going to Plainfield and how you happened to go to Plainfield.

MISS TANZER. The night I met him—no; the very first day when I met him he said to me would I stay down and take dinner with him, and I said no; that I would have to go home and get dressed, and maybe then I would come down with him or I would meet him. I don't know whatever made me do it. I never had done it in my life before, and I never met anybody in that way, but it seemed the minute I saw him it seems that he kind of fascinated me. People will not believe it, but that is the candid truth. I imagine he could take me any place he wanted to.

He did not hesitate. He said "Yes." He said he would come, and he got in the subway with me, and he asked me to meet him, and he came up right to my home, and I didn't ask him up, because I was scared stiff. I said to myself, "Suppose he does ever come up. What will I tell my sisters?" I said—he had a seat there—"you won't mind sitting down here, will you?" He said, "No"; he wouldn't, but he would go and telephone.

MR. GARD. Were you living in an apartment?

MISS TANZER. Yes; in an apartment.

MR. GARD. At that time?

MISS TANZER. Yes. He said, "No; he would be back for me by half past 7." I got dressed, and my sisters asked where I was going, and I had another appointment. I had broke that appointment and told them that if the gentleman called just to say that I had gone to see a girl, or something to that effect; and I met him. From there we went down and got in the subway—

MR. GARD. Where did you meet him?

MISS TANZER. It was in front of our door. It was there that I met him; and we got into the subway; and we got off at Forty-second Street; and from there we went to Shanley's, at Forty-second Street and Sixth Avenue; and we got into the restaurant, and he ordered dinner, but I couldn't eat. I know I had a cocktail. I drank that—that is, I sipped on it and got very dizzy. He started to tell me I was the cutest little thing, and that sort of thing, and that he "Thinks we will be very good friends." Of course, I just listened to him and didn't say anything.

From there we went to the Strand on Broadway. It was too late to go to the theater, and we stayed in the Strand, and walking the street he met somebody that he had known and just bowed to them. We stayed in the Strand until half past 10, I think it was.

MR. GARD. Is the Strand a motion-picture theater?

MISS TANZER. Yes; on Broadway and Forty-seventh Street. We went on home. On my way home he said to me would I like to go to the country next morning. He thought it was a lovely thing, and if it was nice, he thought it would be very nice to spend the day in the country. I have often done that, and I said, "Why, yes." He said he would call for me at 10 o'clock. Then he turned around and he said to me he would take a bag with him. And I said, "Why need a bag?" He said he never uses the hotel towels and soap, and I let it go at that. I didn't say any more. He was to meet me at 10 o'clock. He came right up to my home.

MR. CARLIN. Didn't you think it odd for him to take a bag along?

MISS TANZER. I didn't realize; and I didn't think of it at the moment. I didn't know—yes; I thought it was funny. Why should he take a bag with him just for that one day, going to a

restaurant? He could go to any dressing room and wash; and he said he didn't like to use the hotel towels or public towels, and I never said any more.

The next morning at 10 he was there and one of my sisters was in the kitchen and she just looked through the dining room and saw him. We lived on the fourth floor at that time, and he walked up there; and he was so tired; and he just panted; and he came in and sat down. Nobody met him that morning.

Going down into the street, I turned around and said I would show him the Bronx. He said, "Why, no; we will go to the train." He took a big horseshoe of diamonds and sapphires, and I had a waist on at the time, and he pinned it right on here [indicating]. I said, "No; indeed, not; I wouldn't take—" No; I had a little mourning pin; I was in mourning at that time; and he took it up and I said "I wouldn't wear that." He said, "Why, yes; take it." He pinned it on, and I let him do that. We got into the subway, and he said we would go to New Haven; he said, "Up to New Haven." He said, "Take me for a boat ride"—no; I said that—and he said, "Well, if you want to. I don't know anything about New York." I said, "I will take you for a boat ride." He said, "Do you know where to go?" I thought all the boats left the Battery. I said, "Take me to Asbury Park." I guess that takes about half a day, or mostly an all-day boat ride. He lets me go down with him to the subway, and we got off at the Battery. There were no boats at the time, but we went up and asked somebody. He said, "No; you have spoiled the day for me." I thought, "Well, I am not going to bother with him any more." I got kind of scared with him; and still I wanted to be with him.

There was no boat at the time but just the boat that went over to the Statue of Liberty, and he said, "If that is what you call a boat ride?" I said, "Well, ask." He did ask somebody, and he said the same boat went up the Hudson. I think it was the *Mary Powell*, or something to that effect. I would not go on that boat. I knew it was not a very nice boat, and the gentleman that told us said it had left at 11 something.

Then he turned around and said, "Now you have spoiled the day for me." He said, "We could have gotten the train to New Haven." I turned around and said we could go back yet. He said, "No, indeed, I will not go." He said, "I think there is a Jersey Central train around here somewhere," and I didn't know where it was. He said, "Yes, it is around here, and maybe we could get that train and go to some country place." I said, "Yes."

We walked up and he pretended he didn't know what street the ferry was. I think he asked a newspaper boy, and I think he said Cedar Street—something to that effect—and we went there. We got to the boat and just caught it within a minute.

Before we got to the boat he bought tickets. He looked at a time table and he said, "I think Plainfield will be a nice place. Were you ever there?" I said, "No," and he bought two return tickets to Plainfield. We got on the train and it was just an hour's ride, and he was looking for a restaurant or hotel, and all I could remember I thought it was Kensington Inn, but later on I noticed it was a hotel. We got in there, in a nice clean place, and had dinner. They

did not serve any drinks, but I couldn't eat. He said, "My, you are the funniest woman. Don't you ever eat?" I said, "Yes," but I just couldn't eat at that time, and we sat there; and there was just another couple in the room, and they kind of kept looking at us.

We were nearly finished with our dinner. He left me; he excused himself for a minute or two and went out and came back the next minute and had this big diamond ring, and he put it in front of me on the table and he said, "Here, take this," and I said, "No," I said; "I don't want it." He said to me, "Now, listen; those people are looking at you. Take it so as not to draw any attraction," and I took it and put it on my finger. It was away too big.

He stayed out about 7 minutes, or maybe 10; meantime he had spoken to Safford and Kitchin. I didn't know them. He said, "Come on and get your coat and hat and we will walk around a little while."

I went, and it just started to rain. I got my hat and coat on, and when we got outside he said to me—no; we walked a little while, and he said, "Let's see, 20 minutes." He said this to himself—"I think 20 minutes will be time enough," and I said, "What?" He said to me, "Listen, when we get back and they ask you how the house is"—of course, that would tell what he had spoken to them about—he had asked somebody about some real estate. He told them he was in the customs house—this is what I learned afterwards at the Safford trial—and that he was going to New York and that he wanted to live somewhere near by so he could commute, and that he had heard Plainfield was a very nice place and he came to see it. Mr. Safford was very interested in it, and he must have evidently give him some street to go to.

He turned around and said to me, "If they ask you about the house, say it was a very nice house, but it was too big." I did as he told me. He said, "I will go back there." He said, "They will get you to rest for a little while." It was raining and I said, "All right;" I didn't know any more. He turned around before he entered the door. We walked around about 25 minutes and he said, "Above all, don't take your left glove off," and I think I did it, but he drew my attention to it and I pulled my glove on again. Then he told me they had asked me about Aunt Rose and San Francisco, and I didn't know anything about it, and he said, "Just answer as little as possible and listen to them," and if they said too much I didn't understand to sit back.

We got in and he introduced me as Mrs. Osborne. Mr. Safford was very nice and asked how we liked California, and he thought I would like Plainfield, and how did I like the house, and of course, I said it was very nice, but it was too big. Then I heard him say, "What is the fare to San Francisco?" He said, "Eighty-seven dollars and fifty cents," or something to that effect. Then he turned around and said, "Too bad you can't stay until the next day." He said maybe we would. He said, "We have a very nice real estate man here that would show you these different houses." So he said, "I think it would be a good idea to stay over until the day after." He turned around and said to me, "Would you like to do that?" I just looked at him, and I was so dazed, I didn't know what I was saying, and said, "Yes"—no, I don't know whether he even asked me,

but the fact is I heard Mr. Safford say, "We have very nice parlors, and the lady could go upstairs," and so he turned around and said. "No, I think we will stay." He says, "Have you baggage?" He said, "No, I will send for it." He said, "Why we will show you to a room," and before I knew it I was upstairs, following Mr. Safford—I didn't know whether to run back or go—and he in the back of me. All I could say was, "You will not hurt me, will you?" "No, indeed, but I couldn't let you go up there alone."

We got in the room, and he showed us several rooms, and he wanted to know did I like them and did he like them, and he says, "It is up to Mrs. Osborne." He showed us one room, and he said, no, he did not think that would do, and he showed us another room and he said no, he didn't think that would do, and he took, I think, room 105 or something to that effect.

He left me there, and I just sat down and my head ached and I took my hat off. He went down and about 15 minutes after that he came up with a lot of papers. He put the papers down, and before you know it he hugged me, and before I realized it I was undressed and into bed. It was terrible agony. He held my mouth so I would not scream, and he says, "Don't scream, because it will be awful."

Mr. CARLIN. The committee do not care to hear any further details of this matter. What we are particularly interested in knowing is about this agreement that you had with Mr. Spielberg about the criminal warrant and the indictment that was pending against you. I would like to know whether any agreement was made between you and Mr. Spielberg—I would like to know whether any agreement was made between you and Mr. Spielberg—that if you would sign this paper exonerating Osborne, that you would be saved harmless from prosecution?

Miss TANZER. Yes; he said everybody would; yes.

Mr. GARD. Did you understand that to be a promise and agreement?

Miss TANZER. Indeed, yes; and I have always held him to it, although he didn't give me any writing. He always said he would give the—

Mr. CARLIN (interposing). You have not been prosecuted. have you?

Miss TANZER. No.

Mr. CARLIN. Do you understand why you have not been prosecuted?

Miss TANZER. I have asked him. He said it would die a natural death. He wanted it to come to that, and he said if it hadn't been for the Slades causing all this disturbance and trying to vindicate themselves it would never have come to life. I have asked him several times. I went to him a lot of times and said, "I wish you would try me or dismiss my indictment." I said, "I can't have this over my head all the time. I am a wreck," and he would say to me, "Mr. Marshall won't do it." I said, "Indeed, you will." One day I lost my temper with him, and I was very mad and I said to him, "You better go and have it done; an honest man would acquit me," and he said, "Now, let it die a natural death. Why have a trial?"

Mr. CARLIN. You have never had any conference with Mr. Marshall himself?

Miss TANZER. I never spoke to the man; no; never spoke to him. Mr. Spielberg did all the talking. He used to go there and visit them for quite a time and get agreements with James W. Osborne. I was in Mr. Spielberg's office about three weeks, and then he came to me and said to me, "Rae," he said, "there are some crooks"—that is the way he put it—"and they don't want James W. to prosecute them, and they came to me and offered me \$50," and he said, "If this trick is pulled off," or something to that effect, "I will give you half of it."

I said, indeed, I didn't want half of it, and he said, "Why?" I asked him, "What have you to do with James W. and crooks?"

One of them walked out of the office—I wouldn't know him if I saw him—and the next day he came and told me that they skipped from their bail. I think it was the wire tappers, and he said, "It is all off; they escaped," or something to that effect.

Mr. CARLIN. Let me ask you this question at this point: Why was it, after you located, through your correspondence, Oliver Osborne at the athletic club as James Osborne, that you did not go to his office to see him?

Miss TANZER. I did.

Mr. CARLIN. Did you see him there?

Miss TANZER. No; I left word that I was there. I spoke to his stenographer, as she testified.

Mr. CARLIN. She testified?

Miss TANZER. To the fact that I was there and left my name.

Mr. CARLIN. She did testify to that?

Miss TANZER. Yes; and she told me. When I got there it was Thursday morning before Thanksgiving Day. I used to call him up, and they said he was in Providence trying cases and would be back at the end of the week.

Mr. NELSON. Just before adjournment I was asking questions, and my question was, How did you finally find out that J. W. Osborne was Oliver Osborne who was at the athletic club?

Miss TANZER. I went down there to his place of business, and at the time I wrote this letter I told him I was very sorry that I had gotten the numbers twisted, and it should have been 1180 instead of 3011, and to please answer, and I put my telephone number on. It was Melrose 4960, and I put my home address, so that he would answer, and I thought "here is my telephone address and my home address," and if it was not James W. he would call me up and tell me he was not the man. Instead of that that next evening, or the very same day—he must have gotten my letter that evening—

Mr. CARLIN (interposing). Where did you address your letter, and to whom?

Miss TANZER. I addressed it to J. W. Osborne, care of the New York Athletic Club, Fifty-ninth Street—I think it is 58 West.

Mr. CARLIN. The day that you mailed your letter—how long afterwards was it you got this call?

Miss TANZER. He came that very night.

Mr. CARLIN. You mailed your letter at what time in the day?

Miss TANZER. About 10 o'clock or half past 10.

Mr. CARLIN. In the morning?

Miss TANZER. Yes.

Mr. CARLIN. And he came to your house that night?

Miss TANZER. About half past 7.

Mr. CARLIN. That same night?

Miss TANZER. Yes.

Mr. CARLIN. Did he say he had gotten your letter?

Miss TANZER. No; he did not say a word. He came up and asked did I have dinner, and I said, "No," and he said to come on; if I didn't eat anything to go to the restaurant with him, and I went. On the way I tried to tell him—he said to me that he was in New Haven, and that he tried to get our apartment several times and couldn't reach me on the telephone. That was perfectly ridiculous. He knew the number, but he said he couldn't get our apartment.

Then I turned around and said, "Where were you?" He said, "In New Haven." Then I started to tell him that I went down to the Netherlands that evening, and he turned around and said, "Oh, well, we will forget all about that; don't tell me," and he wouldn't let me tell him.

Mr. CARLIN. He did not say that he got your letter?

Miss TANZER. He never said, and I never mentioned that, because I took it for granted he was James W. Every time I sent a letter he came.

Mr. CARLIN. You spoke of having delivered to him in person a letter?

Miss TANZER. Oh, yes; that was Wednesday night.

Mr. CARLIN. After this visit?

Miss TANZER. Yes—no, Thursday night. He gave me a letter—

Mr. CARLIN (interposing). He gave you a letter?

Miss TANZER. Yes. I met him at the Circle one day.

Mr. CARLIN. One day?

Miss TANZER. Let me see whether it wasn't the same night—no. He came back on Wednesday, and then I had an appointment with him—that Wednesday night he took me—I just had dinner, and we went down town, but it was too late, and I came back home.

Mr. CARLIN. Too late for what?

Miss TANZER. We wanted to go to the theater, but we used to sit and talk. I was so enthusiastic over him, and we couldn't get a chance to go. We went back home, and I got home at half past 10, and he asked would I meet him that evening to take dinner with him and go to the theater?

Mr. CARLIN. Let us get at this letter. When did you deliver to him this letter?

Miss TANZER. That was the night after he came back. I sent one to the New York Athletic Club. Wednesday night, when I met him at the Circle, he was standing there, and he handed me a letter, and at the time he gave me this writing that had got familiar—

Mr. CARLIN (interposing). I am asking you about the time you handed him a letter.

Miss TANZER. Yes; at the Circle.

Mr. CARLIN. Why did you hand him a letter?

Miss TANZER. No; he gave me one first.

Mr. CARLIN. He gave you a letter?

Miss TANZER. Yes, he gave me a letter, and I have it. I thought it was in answer to one I sent to the New York Athletic, and I couldn't just wait until I got home to read it, and we got on the car

and I said, "Can I read it now?" and he said "Yes," and I opened it and read it.

Then I put it back in the envelope, and I thought it was a very lovely letter, and then he put the envelope on his knee in the car and wrote on it, "Answer soon to-morrow," and that is the time I noticed there were—no, I didn't notice it there. There were two different handwritings.

MR. CARLIN. Why did you find it necessary to deliver to him a letter in person when you were with him?

MISS TANZER. No; he gave me the letter first, and then he said, "Have a letter for me to-morrow." He said that to me, and then, "In answer to this one?"

MR. CARLIN. Then when you met him next day you had a letter for him?

MISS TANZER. No, I didn't have it Friday, because I didn't see him Friday, as he said he wasn't feeling well.

MR. CARLIN. When did you have the letter?

MISS TANZER. That Saturday.

MR. CARLIN. You met him Saturday?

MISS TANZER. Yes; and I handed him the letter that I saw in the detective's hands.

MR. CARLIN. You handed him a letter?

MISS TANZER. Yes.

MR. CARLIN. What did that letter contain?

MISS TANZER. The answer to his. I wrote, "My dear big boy." or something to that effect, and I told him that I would not have anybody else and that I just loved him.

MR. CARLIN. It was just a love letter?

MISS TANZER. Yes; and his was, too. He took that letter. The next time I saw that letter it was in the detective's hands, and I have the envelope. That is the one that had the—

MR. CARLIN (interposing). The letter you handed James W. Osborne was the letter you afterwards saw in the hands of the detective?

MISS TANZER. Yes; and then I saw it again at the Safford trial, when they handed it to me without an envelope, and I told the judge, and Woods immediately got up and objected, and Slade asked where was the envelope. They said there was no envelope to that letter. Then I saw the letter there again—there was two letters there, and there was another one on the blue stationery, and one of them had a stamp on it, and one of the detectives had it, and that is how I recognized my letter.

MR. CARLIN. How long was it after he visited you the last time before you went to a lawyer?

MISS TANZER. The early part of December or latter part of November is when I saw him—say, about the 29th of November is the last time I saw him. Then I went to a lawyer February 17, after the detective came to my home. I never wanted to bother or care anything about it.

MR. CARLIN. Why did you go to a lawyer?

MISS TANZER. I will tell you. After the detectives came to me and threatened me and told me all these things and wanted to settle—

MR. CARLIN. They had done that before you sought legal advice!

Miss TANZER. Yes. Otherwise I made up my mind not to bother and not to do anything more.

Mr. CARLIN. In the meantime had you continued writing to Osborne?

Miss TANZER. Yes—no; then I stopped entirely.

Mr. CARLIN. If you had stopped and he had stopped, why did you suppose the detectives were around?

Miss TANZER. After he called me up on the telephone that time to tell me that he was not the man and that he had received my mail—that is the time I became angry and furious. If he had ~~not~~ called me up or ever came near me again, I should ~~never~~ have bothered with him.

Mr. CARLIN. Then he called you up and told you he was not the man?

Miss TANZER. Yes; February 11.

Mr. CARLIN. Did you recognize the same voice?

Miss TANZER. Yes; but he tried to make it harsher, and he changed it, and I turned around and I said, "I know better." He testified to the thing on the stand.

Mr. NELSON. The chairman is interested in his line of thought and I am interested in my own. To come back again, you had suspected that J. W. Osborne was Oliver Osborne, and you wrote him a letter and you met him the next day. Did I understand you that he said nothing—

Miss TANZER. Nothing.

Mr. NELSON (continuing). To acknowledge that he received the letter?

Miss TANZER. What is it?

Mr. NELSON. Did he give you to understand he had received no letter?

Miss TANZER. No; he would not let me talk about that at all.

Mr. NELSON. He would not let you talk about that?

Miss TANZER. No; he would not let me mention anything about it.

Mr. NELSON. Did he answer anything in the letter that mentioned the letter?

Miss TANZER. No.

Mr. NELSON. What did you say to him in your letter?

Miss TANZER. One time I wrote him and told him I was in trouble and I didn't want any notoriety. I thought I had been at the time—and two days after that he came.

Mr. NELSON. Did he mention that?

Miss TANZER. No.

Mr. NELSON. He never said anything about it?

Miss TANZER. He never said a word. Every time I started to tell about the letters he used to stop me and tell me not to say anything.

Mr. NELSON. Did you tell him about the letters?

Miss TANZER. I started to.

Mr. NELSON. Did you get so far as to say anything about a letter?

Miss TANZER. Yes.

Mr. NELSON. Did you mention a letter?

Miss TANZER. Yes; I said, "I wrote to you."

Mr. NELSON. What did he say to you?

Miss TANZER. He told me that he wrote several letters to me.

Mr. NELSON. He did tell you that?

MISS TANZER. Yes.

MR. NELSON. Had he written letters to you?

MISS TANZER. No; I never got them, and I said to him, "It is funny that if you wrote letters to me and addressed them to my home address, for me not to get them." He said, "Yes; I wrote you one from Philadelphia."

MR. NELSON. Had you been talking about writing him this letter?

MISS TANZER. No.

MR. NELSON. How did he come to tell you about those letters?

MISS TANZER. I said, "I wrote you a letter," and he said—then he didn't say anything more. Then he would say, "Oh well, we will let it go at that." Those were his words.

MR. NELSON. You wrote him that letter and he came next day?

MISS TANZER. Yes; every letter I wrote him he came right after the letter.

MR. NELSON. The next time you wrote him a letter after that first letter was about when or how long after the first one?

MISS TANZER. A week after that.

MR. NELSON. How did you come to write him again? What was the occasion for your writing him that letter?

MISS TANZER. Because he stayed away.

MR. NELSON. Then what did you write him?

MISS TANZER. I told him to please come back, and that I was lonesome, and all that sort of thing.

MR. NELSON. To whom did you address it?

MISS TANZER. J. W. Osborne, and inside "Dear Oliver."

MR. NELSON. How was it addressed—to the athletic club?

MISS TANZER. Yes; New York Athletic Club.

MR. NELSON. Did you have any "return in 10 days," or anything like that, on the letter?

MISS TANZER. I once sent a registered letter to him and put my address on the outside, I think.

MR. NELSON. We will come to that later. We will come to it right in its order. That second letter you sent him also to the athletic club?

MISS TANZER. Yes.

MR. NELSON. How soon after that did he appear, after he received that letter?

MISS TANZER. A week after, I think.

MR. NELSON. He did not come until a week after, then? You wrote the letter how long after the first one?

MISS TANZER. The first letter that I wrote, he came the very same day.

MR. NELSON. And the next letter?

MISS TANZER. The next letter I wrote—he stopped coming on Saturday, and I wrote it on Monday, and he was there Thursday.

MR. NELSON. Did he say anything there with reference to the letter?

MISS TANZER. No.

MR. NELSON. Did you bring up the subject of the letter that you wrote him?

MISS TANZER. No. I took it for granted that he got the letter. I was afraid that—I knew he didn't want me to know who he was.

MR. NELSON. You did know, then?

MISS TANZER. And I knew who he was.

MR. NELSON. Did you know then he did not want you to know who he was?

MISS TANZER. I imagined that.

MR. NELSON. What led you to imagine that at that time?

MISS TANZER. Because he would not let me talk to him on the subject. Every time I wanted to tell him he would stop me.

MR. NELSON. He would stop you?

MISS TANZER. Yes; every time.

MR. NELSON. How soon after the second letter did you address him a third letter?

MISS TANZER. Very shortly after that.

MR. NELSON. How soon?

MISS TANZER. Soon after that—about a week, I think.

MR. NELSON. What was the occasion for that letter?

MISS TANZER. Then he paid no attention to that letter. Then I called up his office, and they told me he was trying a case at Providence at the time.

MR. NELSON. You called down at his office?

MISS TANZER. Yes; and they told me he was trying a case in Providence at the time.

MR. NELSON. In Providence?

MISS TANZER. Yes.

MR. NELSON. When did you send him the registered letter?

MISS TANZER. About two weeks after that.

MR. NELSON. What was the occasion for that?

MISS TANZER. I just wanted to know if he had received the letter, and I asked for a return ticket or a return card, and that case came back signed with "Oscar Youngberg," the clerk of the Athletic.

MR. NELSON. Did he answer that letter?

MISS TANZER. No. Then he never came again until I met him Christmas Eve.

MR. NELSON. Where did you meet him then?

MISS TANZER. In New York, in front of Bloomingdale's. I met him, and he said, "Did you receive my letter?" I said, "No, indeed, not." I said, "Did you receive mine?" He never said a word. Then he said, "You didn't answer me; that is why I didn't care to come."

He was going west on the Fifty-ninth Street cars. He had a transfer and was to take the Broadway car up. That is what he said to me. He walked over with me and he said, "Well you didn't care to answer my letter; that is why I didn't come around." He made an appointment with me for that evening, but he never kept it, and I never heard from him since.

Then I wrote him another letter, asking him to come back—no; I wrote a letter telling him, after I went down to meet him at the Circle and he wasn't there—this was Christmas Eve, and two days after that, on the 27th, I wrote a letter telling him that I realized now that he had tricked me. They read the letter; they have them all. It was not the money or diamonds or things that I cared for, but did he realize what had happened to me, and all this; but I never received an answer.

MR. NELSON. That is the letter upon which you were indicted?

MISS TANZER. No, no. Then I didn't write any more letters. The last one was after I seen the detectives—no; after he called me up on the telephone and told me he was not the man.

MR. NELSON. This last letter that you mention—

MISS TANZER (interrupting). I wrote that to his Broadway address, 115 Broadway. That was the first one wrote to 115 Broadway.

MR. NELSON. That is his office?

MISS TANZER. Yes.

MR. NELSON. Did you get any answer to that?

MISS TANZER. No.

MR. NELSON. That was what date?

MISS TANZER. December 27, about.

MR. NELSON. Then after that you had a talk with him over the telephone?

MISS TANZER. Yes; he called me up. Then I didn't hear from him.

MR. NELSON. What did he say over the telephone?

MISS TANZER. That he was not the man—no; he had his secretary call me up first. He was in the Roma Restaurant at the time.

MR. NELSON. Where were you?

MISS TANZER. I was home.

MR. NELSON. He called you up at your home?

MISS TANZER. Yes; I traced the number and found out where he was.

MR. NELSON. How would he, if he were not Oliver Osborne, know where your home address was?

MISS TANZER. That is what I would like to know. He said he was down to the New York Athletic Club. That is what he said—and they handed him a bunch of seven letters.

MR. NELSON. Who handed those to him?

MISS TANZER. The clerk handed him a package of seven letters.

MR. NELSON. All at one time?

MISS TANZER. Yes.

MR. NELSON. Did he tell you this over the telephone?

MISS TANZER. No. That is what he testified to—yes; he told me. His secretary told me that he had received all the letters only a few days before, and I said to her, "That is impossible. Aren't letters forwarded to him, or doesn't he get his letters every day?" I said, "It is very funny since November 19 until February 11 that he would not get any letters," and I started to count—I said, "November, December, January, February,"—I said, "Do you mean to tell me it takes four months for Mr. Osborne to receive his letters?" She said, "Why, yes; indeed," she said, "he was away all this time."

MR. NELSON. In other words, your conclusion was, he being so well known, that they would forward them from the Athletic Club to his office or home?

MISS TANZER. Indeed, I should say they would. I am sure they would have done that.

MR. NELSON. When did you write the letter upon which you were indicted?

MISS TANZER. That is after he called me on the telephone and told me he was not the man.

MR. NELSON. About what time was that?

MISS TANZER. February 11.

MR. NELSON. You were indicted about what time?

Miss TANZER. The detectives came February 16, and then I was indicted—no; I was arrested March 19. I brought my suit March 16, and March 19 I was arrested and held for using the mails to defraud.

Mr. NELSON. Are you sure about the date of the letter on which you were indicted?

Miss TANZER. Yes. Commissioner Houghton didn't know which letter I was indicted on.

Mr. NELSON. The letter that was produced in evidence?

Miss TANZER. They were all nine produced, and he didn't know which one I was indicted on. You will see that in the minutes. Mr. Littleton asked him, "What letter did you indict the girl on?" He said he didn't know.

Mr. NELSON. Did Mr. Spielberg ever say he had gone to the grand jury in your case?

Miss TANZER. Yes. He came back one morning and said he was called to the grand jury.

Mr. NELSON. Did he ask you to sign a waiver?

Miss TANZER. No. I didn't know he was going to the grand jury.

Mr. NELSON. You did not know he was going there?

Miss TANZER. No. All I heard him say was he was called to the grand jury, and then he came back and said, "We will not be indicted now, because anybody that they call to the grand jury is not indicted," and he said, "I told them a story."

Mr. NELSON. "A story"?

Miss TANZER. Yes.

Mr. NELSON. Did he tell you what he told them?

Miss TANZER. He said, "I absolutely vindicated you and the Slades and explained everything to them about you"—my whole story. He told me that from beginning to end.

Mr. NELSON. You gave him no permission, either verbal or in writing beforehand, before going to the grand jury?

Miss TANZER. Indeed not. I was happy that he went to the grand jury, so he would not be indicted.

Mr. NELSON. So he would not be indicted?

Miss TANZER. Yes; because everybody was indicted.

Mr. NELSON. You thought he had acted as your friend?

Miss TANZER. Indeed, yes.

Mr. NELSON. And had told such a story that you were relieved from any trouble?

Miss TANZER. Yes.

Mr. NELSON. Have you had any conversation with Mr. Spielberg with reference to testifying before this committee?

Miss TANZER. No.

Mr. NELSON. None whatever?

Miss TANZER. No.

Mr. NELSON. Has he asked whether you were going to be called?

Miss TANZER. Yes; he asked whether I was subpoenaed and I said no.

Mr. NELSON. Did he say anything about whether you would be likely to be subpoenaed or not?

Miss TANZER. No; he said if I was, to call him up.

Mr. NELSON. Did he say why you should call him up?

Miss TANZER. He said he would come down with me. He said, "Well, it is about time they get it down there. They didn't treat you right." I thought to myself, "You helped them, anyway," but I said to him, "Yes," and he said, "Well, when they call, you call me right up." That was Saturday. I didn't want him to come, because if he knows I am here, he will forfeit the bail absolutely.

Mr. NELSON. Why do you think so?

Miss TANZER. Oh, indeed, he will do it.

Mr. NELSON. Why do you think so? What fact have you in your mind?

Miss TANZER. I don't know about any fact he may have here.

Mr. NELSON. Has anybody told you he knew so?

Miss TANZER. No; I don't know what he will do; no, sir.

Mr. NELSON. How long were you with him after he became your bondsman?

Miss TANZER. April, May, June, and July.

Mr. NELSON. You testified that you received some pay for the last month. Was that it?

Miss TANZER. Yes; for the month of July.

Mr. NELSON. How much money did you get from him?

Miss TANZER. Five dollars every week, just to pay my carfare and lunches.

Mr. NELSON. For how many weeks?

Miss TANZER. For about four weeks, until I got my position.

Mr. NELSON. This position you have now?

Miss TANZER. Yes; this one, too; but I had one before that.

Mr. NELSON. What reason did he give you for keeping you so long as that?

Miss TANZER. I don't know.

Mr. NELSON. Did he ask you to stay?

Miss TANZER. Yes; I couldn't stay home; I would go mad if I stayed home, and he said it was much pleasanter in the office up there.

Mr. NELSON. Tell me more in detail about that offer to share with you something that Osborne was to get. I did not quite understand that. What was the promise that he held out?

Miss TANZER. About this—I don't remember whether it was—he said some crooks, he was to prosecute them, and he was to get some—

Mr. NELSON (interposing). J. W. Osborne was to get the money?

Miss TANZER. No; he was to get the money.

Mr. NELSON. From whom?

Miss TANZER. From these men, if he could get James W. Osborne not to appear against them. That is what it was. You see, I guess he was on the other side.

Mr. NELSON. The money was not to come from Osborne?

Miss TANZER. No.

Mr. NELSON. Did he make any other promises or offers?

Miss TANZER. Yes.

Mr. NELSON. What were they?

Miss TANZER. When I got my first position after I had left his office, he was interested in a millinery establishment on Fifth Avenue and Fifty-seventh Street, and he got me a position there. I didn't like the position he had gotten for me, and I told him that I wouldn't stay, and said to me, "Now, you just stay," he says, "wait

awhile and stay," and one morning at 9 o'clock he came up there and I said to him—or rather he said to me, "Rae, I want you to stay there, because there is some deal coming through that concerns you and Jimmie Osborne." That is just what he said. I said, "Tell me what is it?" I said, "Why would I have any deal with James W. Osborne?" He said, "I will tell you all about it; wait." Of course, I didn't give him a chance to wait, because I left.

Mr. NELSON. Why did you leave?

Miss TANZER. Because I didn't like the environment, and I felt those people there didn't want me, because they were his partners and they thought I went back and told.

Mr. NELSON. Was his treatment of you satisfactory?

Miss TANZER. He never came there. He was just a silent partner in it.

Mr. NELSON. Who was a silent partner?

Miss TANZER. Mr. Spielberg. These people kind of thought—whenever he used to come, they would see us talking, and he would speak to me and they would think I was telling him things about the business, a thing I absolutely didn't do.

Mr. NELSON. Were you with your sisters or were your sisters with you when you appeared before this district attorney at any time, or before any of his assistants?

Miss TANZER. Yes; before Safford's trial. It was to come up in April, I think—or in May. Hershenstein telephoned Mr. Spielberg to bring my two sisters, and I turned around to Mr. Spielberg and I said, "Yes; but before you bring my sisters —" Then I knew what immunity meant. I said, "Remember, before my sisters go up to that office, they are going to tell the absolute truth," and I said, "Before they open their mouths," I said, "You get them immunity." I would do anything to have my two sisters out of that. The two girls didn't deserve it at all.

Mr. GARD. Are your sisters indicted?

Miss TANZER. Indeed, everybody was indicted—after those girls worked and gave me everything and gave me my education, and this is how I repaid them, but they stood by me. He put up the bond for my sisters, because I didn't have any money for a bond.

Mr. GARD. What do you mean by saying "This is how you repaid them"?

Miss TANZER. By bringing these indictments and putting them to the trouble.

Mr. GARD. You mean through your mistake?

Miss TANZER. Yes, indeed.

Mr. GARD. Tell me about your sisters being present. What were they asked by Mr. Hershenstein—was he there?

Miss TANZER. Yes.

Mr. GARD. Who was the other man? I understand you never met Mr. Woods, so you must have met his assistants.

Miss TANZER. I met Mr. Woods first—Hershenstein first, and then Woods came in.

Mr. GARD. What was the conversation between you?

Miss TANZER. They called Mr. Spielberg on the telephone and asked him to have my two sisters there, and I said, "I am going along with you." When I got there Hershenstein said, "What did

you bring Rae for?" He said, "Well, she wanted to come." He said, "Let her stay out," he said. And he kept me out; he wouldn't let me go in.

Mr. GARD. Then, you did not hear what the sisters said?

Miss TANZER. Yes; I did. He opened the door, and then I could hear.

Mr. GARD. What did you hear?

Miss TANZER. He said to them, "Tell me, girls; tell me the truth. didn't Slade tell you to do anything, or is there something back of this?" And the girls said, "No; indeed, not." They said, "We told you all we could tell you." He says, "Tell us now. Will you make a statement?" The girls said, "No; we will not make a statement." They said, "I told you all I know at the hearing." They said, "I don't know any more." He said, "Isn't Slade—is there something back of this with Slade?" My sisters said, "No; Slade has acted as any other lawyer." They didn't ask them to do anything.

Mr. GARD. Did he ask whether they actually identified Mr. Osborne?

Miss TANZER. Yes; they asked them that, and my sisters said. "Yes; of course they did."

Mr. GARD. One sister?

Miss TANZER. Both of them. He said, "Is he the man?" They said, "Indeed, he is the man." You could not get them to say otherwise.

Mr. GARD. Who else identified this man that you identified as being J. W. Osborne?

Miss TANZER. Mr. Safford.

Mr. GARD. And your two sisters?

Miss TANZER. Yes.

Mr. GARD. And yourself?

Miss TANZER. Yes.

Mr. GARD. Who else?

Miss TANZER. Nobody else came. They were all scared.

Mr. GARD. There were not any other witnesses?

Miss TANZER. No.

Mr. GARD. Who saw Mr. Oliver Osborne, the one that went by that name? They also saw James W. Osborne and assured you it was the same person?

Miss TANZER. My sister.

Mr. GARD. Which one?

Miss TANZER. Dora and Rose and Mr. Safford and myself.

Mr. GARD. Those are the four?

Miss TANZER. Yes; that is all that ever saw him.

Mr. GARD. Didn't he appear—

Miss TANZER. He wouldn't do it; no. He didn't want to meet anybody.

Mr. GARD. Was there another sister that saw him?

Miss TANZER. Yes; but she didn't see him only about five minutes.

Mr. NELSON. She did not come to testify?

Miss TANZER. Yes, she did; but she said she would not testify because she did not see him long enough. In fact, she only saw him a minute and then went into the other room.

Mr. GARD. What occasion had the other two sisters for knowing him?

MISS TANZER. He took dinner with us.

MR. GARD. He took dinner with you?

MISS TANZER. Yes; and they sat with him, and they were the ones that spoke to him on three or four occasions.

MR. GARD. Once only?

MISS TANZER. No; on two or three occasions.

MR. GARD. And at different times?

MISS TANZER. At different times.

MR. GARD. How long did he sit with them?

MISS TANZER. About half an hour or a quarter of an hour.

MR. GARD. You introduced him as Mr. Oliver Osborne?

MISS TANZER. Mr. Osborne.

MR. GARD. What sort of a looking chap was he? He is tall, you say?

MISS TANZER. Yes; he was 5 feet 10.

MR. GARD. And about what age?

MISS TANZER. He looked about 47 or 48 to me.

MR. GARD. What was the color of his hair?

MISS TANZER. A gray mixture.

MR. GARD. What color of eyes?

MISS TANZER. His eyes—I said blue. I can not really remember; I should not have said, because nobody could remember eyes. I know they are sort of grayish—I called them blue. He said they are not blue, but they are grayish, sort of blue.

MR. GARD. A mustache?

MISS TANZER. No. He had a dimple in his chin—a broad chin.

MR. GARD. You say he had diamonds?

MISS TANZER. When I met him. When he met me, he put them on.

MR. GARD. Did you ever read the newspaper about a certain Oliver Osborne—

MISS TANZER. Yes; I think I know who it is.

MR. GARD. Who is he?

MISS TANZER. The morning after I was arrested I saw a big ad in the paper, "Oliver Osborne will appear to-day." It said he was a steamfitter. I had a young lady working for me, and she was kind of a tattletale and I didn't like her. Of course, I was nice to her, and tried to be as nice as I could. She carried tales and made a lot of mischief. She knew about this time the detective came, and she used to talk, and one day I went to Mr. Farrington and I said, "I don't like Carrie; she doesn't act as nice as she could." He said, "If you don't want her, let her go." One day she got very nasty and I said, "Carrie, now you go," and she became very hasty and called me everything under the sun, and Mr. Schuyler said, "Don't do that; you get out." I told Mr. Farrington, and he said, "Is she out?" He said, "It is a good thing for her. Keep her away." So she turned around and she said, "I am going down to James W. Osborne's and I will tell him all about it."

MR. GARD. How did she know about J. W. Osborne?

MISS TANZER. The detectives came.

MR. GARD. She knew all about the detectives?

MISS TANZER. Yes. They were trying to get the letters. In fact, I kind of confided in her, you see. I told her I went with James W. and how much I cared for him and where I went to, and all this sort of thing. She said, "I am going down to him." She had always

told the girls she had a brother who was a steamfitter and taking the civil service examination or something to that effect. I think it was that. I thought probably Carrie had gone to James W. and told him about this man, and then they said it was he. I was under the impression that they were going to try to take him and tell him to say that he was the man. I had all the girls from Farrington & Evans go down, because they had met him.

MR. GARD. Met whom?

MISS TANZER. The brother. Mr. Slade called them up, and I told Mr. Slade to call them up. The matron—I wasn't smart enough, and I told the matron this thing. The next morning there were three of the matrons, and they tried to pump me, and I spoke to them and I said, "I know who that steamfitter is; it is Carrie's brother," I read they let him go and promised him everything good so he would appear and that they would protect him. I told them all that, and I had the girls there, but no Oliver appeared.

MR. GARD. You read a description of this supposed Osborne?

MISS TANZER. Yes. They said it was in the newspapers that morning that he was 6 feet. James W. got up on the stand and said he was 5 feet 10, and that he was tall, stately man, and the way he described him, and they gave me the letter that told all about it.

MR. GARD. The description in the newspapers about the slim fellow?

MISS TANZER. Yes; and then I knew it was a ruse or something. I knew they had something.

MR. GARD. That was not the man at all whom you met?

MISS TANZER. Indeed not. I think they were bringing Carrie's brother to put him and say he was the man.

MR. GARD. The description, so far as you read or heard of it—

MISS TANZER. It was a description of the brother. I might be wrong, but I don't know; I thought it was that they had Carrie's brother as their witness. Carrie appeared as their witness.

MR. GARD. She did?

MISS TANZER. Yes. Slade subpoenaed her, but she was with Mr. Woods and Mr. Woods told me later on, when I made my statement, that he hadn't seen Carrie Devine. He said he hadn't, but she was there as a witness with the rest of them, with Kitchin.

MR. GARD. Kitchin?

MISS TANZER. Yes; the proprietor of the hotel.

MR. GARD. Mr. Kitchin is gone?

MISS TANZER. Yes; and he knew why he was gone.

MR. GARD. Why was he gone?

MISS TANZER. He lied; that is why he was gone. At first he said he was the man, and then when the Federal authorities got hold of him, then he wasn't any more, but he admitted on the stand that he looked like him. He had the register slipped out of his attorney's office. Why was that there? Why didn't it stay in his office?

MR. GARD. Have you anything more or anything at all in the way of handwriting to identify Osborne?

MISS TANZER. Yes; Mr. Slade says he has had X rays on it.

MR. GARD. Was there anything on the letter that was in handwriting?

MISS TANZER. Yes. "Answer this to-morrow" is entirely different from the handwriting of the "Oliver" letters.

Mr. GARD. The other "Oliver" letters were disguised, you say?

Miss TANZER. Yes; they were written by somebody else.

Mr. GARD. Why did you think so?

Miss TANZER. That was proven.

Mr. GARD. In the case?

Miss TANZER. Yes. It was proven by Kingsley.

Mr. GARD. Where was this other handwriting?

Miss TANZER. On the envelope.

Mr. GARD. What was it?

Miss TANZER. "Answer soon to-morrow."

Mr. GARD. Where is that envelope?

Miss TANZER. Mr. Slade has it—somebody has it at court. I don't know where it is. Just think of putting 10 pretty girls there and having them there to say they are Oliver's girls, and giving each one of them a letter, but they wouldn't come up and testify. They were sitting in court, and the next day they had a girl—

Mr. GARD (interrupting). They were Oliver's girls?

Miss TANZER (continuing). Yes—in the papers. The papers were full of it.

Mr. GARD. We have not read the papers.

Miss TANZER. People reading the papers thought it was so. They said that all of Oliver's girls were there to testify for him, but none of them went on the stand to testify. They each had letters of no date, each in the Oliver handwriting. None of them went with Oliver. I was the only bad girl in the bunch.

Mr. GARD. That is, you were the only one charged with that?

Miss TANZER. I am the only bad girl. Instead of them trying to protect me—they know there is an Oliver. They have got his trunks and they have his books and clothes and everything, but they couldn't get him, before he had a chance to get to the station. They got his things, but they couldn't get him.

Wilcox took the Oliver Osborne letter out of the safe—

Mr. GARD (interposing). But this is something you do not know of your own knowledge, that you are about to state?

Miss TANZER. It was brought out in court.

Mr. GARD. That is, in the trial?

Miss TANZER. Of the Slades and of Safford—no; this was all brought out at the Slades trial.

Mr. GARD. At his preliminary hearing?

Miss TANZER. Wilcox himself admitted that when Oliver came to their office at 9.15 in the morning the stenographers were there and the clerks were around, and yet not one of them could go to the telephone and call up the Federal Building, only three or four blocks away. They could not do that, but sent him to James W. Osborne, in the Sherman Square Hotel, and he was allowed to get away with them.

Mr. GARD. Who sent him up here?

Miss TANZER. They say they called Mr. Osborne, and Mr. Osborne said, "Send him to me in the Sherman Square Hotel," and he went up, and Wilcox followed them with the Oliver letter.

Mr. GARD. Who is Wilcox?

Miss TANZER. James W. Osborne's assistant—one of the attorneys in his office. When Mr. Littleton cross-examined him on it, Woods jumped up and he said, "Mr. Littleton is reading the wrong page."

Mr. GARD. We will get this from Mr. Littleton or some other person, as to what occurred in court. After you had recanted, or whatever you call it, did you testify or have you made a public statement or made any statement under oath that this Oliver Osborne is James W. Osborne?

Miss TANZER. Yes; at Safford's trial.

Mr. GARD. I understood you were not permitted to make that statement?

Miss TANZER. Oh, yes.

Mr. GARD. You did positively swear that?

Miss TANZER. Yes; they let me say that.

Mr. GARD. Oh, you did?

Miss TANZER. Yes; but they wouldn't let me explain how I recanted.

Mr. GARD. You have recanted that statement, but not under oath.

Miss TANZER. No; not under oath.

Mr. GARD. Under oath you have always asserted that Oliver Osborne is James Osborne?

Miss TANZER. Yes, sir.

Mr. GARD. Before this committee, what do you say?

Miss TANZER. Yes; he is Oliver Osborne.

Mr. GARD. That is Oliver Osborne with whom you went is James W. Osborne whom you have seen often in court?

Miss TANZER. Yes; but he is a good actor, and he has everything covered up by the United States. They have it so if they want me, they could get me to-morrow.

Mr. GARD. Has there been any threat?

Miss TANZER. Yes.

Mr. GARD. Have there been any threats made to you that if you failed to stand by your recanted statement, if I may use that term, your bond would be surrendered?

Miss TANZER. No.

Mr. GARD. What threats have they made, and by whom were they made?

Miss TANZER. After I recanted—after I testified again at Safford's trial that he was the man, Mr. Spielberg used to say to me, "Is he the man? You know he is not." I said, "Indeed he is." He said, "I won't like you if you say he is." I said, "You won't?" I said, "I am not afraid of you; I am not afraid of Mr. Marshall; I am not afraid of anybody; I have gone so far and I have had so much misery through this all, that I could stand a whole lot more."

Then, before the committee came to New York, I was up at my place of business here, and Mr. Spielberg's stenographer called me and she said, "Rae, somebody wants to speak to you." I said, "Put him—put them on, whoever it is." I got the telephone, and I heard somebody say, "Hello, sweetheart." I said, "How do you do?" I said, "Who is this?" I could not recognize the voice. He said, "Don't you know me? It is your friend Jimmie Brander," a personal friend of James W. Osborne, who goes to Spielberg's office. He was always nice and I spoke to him, and that is about all. He said to me, "I have some news for you, Rae." I said, "You have?" I said, "Meet me to-night on your way—," I said, "from the office." I asked him to stop at my place of business, because I was very anxious to know what it was. He said, "No, I can't meet

you to night; I am going out to dinner." He said he had some appointment. He said, "Meet me Monday night for dinner." I didn't want to go to dinner with him, so I said, "No; I will come down to your office." Then he said, "I will have Mr. Spielberg's stenographer call you Saturday and tell you what to do to get in touch with me." About half-past 11 she called me and she tells me Mr. Brander wants me to call him. I called him and he said, "Could you come down now?" I said, "No; I will not be able to leave until half-past 2 or maybe 3, but wait for me until half-past 3." I said, "If I am not there at half-past 3, go on, and I will call you up and see you some other day." He said, "No; it is too late, and we won't wait." I was very anxious to know what it was and I said, "You wait for me and I will be down." He said yes he would wait.

I got there just at 3 o'clock, and when I got in he took me into his office and he was very nice, and he said, "Where have you been keeping yourself?" I said, "Trying to live somewhere so that I don't have anybody nagging at me and chasing after me. I don't want everybody to know where I am." He said, "You haven't come near, and I haven't seen you for a long time." I said I was very busy and I couldn't. Then he said to me, "I have some news for you." I said, "You have? What is it?" He said to me, "You know I was out with Peckham the night before and Peckham spoke to me about you." I said, "Yes; that is nice." Then he said to me, "They are so bitter against you that"—He said they were bitter against me. I said, "Are they?" I said, "I don't care." He said to me, "Well," he said, "I suppose"—No; "I told Peckham to go and tell James W. Osborne that if your case came up I would try you." He meant he would try me. I said, "Who told you that?" I said, "Mr. Spielberg promised to get a lawyer for me and do all he can for me if this ever came up." I told him, "You are a friend of mine and so is J. W., but I would have to put the friendship aside for him, and I would expose him"—those were the words I spoke—and he said, "I will sure dismiss your indictment." No; then he kept on saying, "Well, you know you want this over, don't you?" He said, "You have had"—this is what Jimmie Brander said—"You have had enough trouble, and it is about time you were over this thing." I said, "Yes. I wish I was. I have asked Mr. Spielberg 150 times to either have the trial or dismiss my indictment, but he said I couldn't do it." I said, "Why can't you do it and not Mr. Spielberg?" He said, "You must make a motion," or something to that effect.

He said to me, "I would like you to meet Mr. Peckham." I said, "Indeed, I won't. What do I want to meet him for?" Before I realized he had James W. Osborne's office on the telephone, and he called Mr. Peckham and his stenographer both.

Mr. GARD. Mr. Peckham is in the firm of Osborne?

Miss TANZER. James W. Osborne's secretary—his very confidential man. I said, "What are you doing that for?" Mr. Peckham wasn't in, but he asked for Al Bryant. He said, "I want you to meet them right here." I said, "What do you want me to meet them for?" But later on I heard—

Mr. GARD. I merely asked if there was any threat of anything.

Miss TANZER. No; but he said did I want my indictment dismissed, and that they were very bitter against me.

Mr. GARD. They would dismiss your indictment if you would do what?

Miss TANZER. He asked me wouldn't I like to have my indictment dismissed.

Mr. GARD. Did he make any promise?

Miss TANZER. No; he just said that he wanted to know how I felt toward him, and he wanted to know how I felt toward Marshall. I told him to tell Mr. Marshall if this committee comes to New York City or anywhere I am going to come. I said, "He hasn't spared me one bit, and I don't care what he does with me; I am going to testify."

Marshall, I have heard later on—I will not mention the party's name; I absolutely won't, because I promised on my oath, and I don't care if they put me in jail or do anything, I will not give this party's name—but I learned afterwards that Marshall wanted me to testify for him. I turned around and told him, indeed, I wouldn't. This is what I heard.

Mr. CARLIN. Has anybody, anywhere, at any time intimated to you that it was desired by Mr. Osborne or by your counsel or by anybody else to have you not testify before this committee?

Miss TANZER. No; just this that I tell you. The first thing that I knew was that I thought of Spielberg and that he had sent him, because Mr. Spielberg would never give anybody my address. Several people have asked for me and called me up—friends of mine—and begged him to tell them where I am, but he absolutely refused, and I thought it kind of funny for him to give Jimmie Brander my address. I said, "Did Mr. Spielberg send you?" And he said, "I am going to tell Spielberg you are going to change counsel."

Mr. CARLIN. Mr. Spielberg has your present address, hasn't he?

Miss TANZER. Yes.

Mr. NELSON. Do you know that Mr. Brander is a particular friend of Mr. Osborne, other than through the statement Mr. Brander made?

Miss TANZER. Yes; he is. He served with him, he said, for 10 years, under Jerome and Fowler.

Mr. NELSON. He served with him?

Miss TANZER. No.

Mr. NELSON. You have not seen them together?

Miss TANZER. No.

Mr. NELSON. You only know what he told you?

Miss TANZER. Yes.

Mr. NELSON. Did you ever see a photograph of yourself and Mr. Osborne together?

Miss TANZER. No; but I heard of it.

Mr. GARD. Did your sisters ever make any written statement saying that this Oliver Osborne was not James W. Osborne?

Miss TANZER. No, indeed not. That is what they wanted them to do. That is what Woods said to the girls. After Hershenstein said to them, "Are you going to make a statement now or never?" my sisters said, "No."

Mr. GARD. You told us about statements you made and gave to Mr. Spielberg in writing, and I wondered whether your sisters did that?

Miss TANZER. No; they would not; indeed, they would not.

Mr. NELSON. For what are your sisters indicted?

Miss TANZER. Perjury. I didn't know what perjury meant until after Mr. Slade told me what it was. He came to the office Saturday after I had gone to Mr. Spielberg and signed my paper saying he is not the man. Mr. Slade turned around and said to me, "Girl, do you realize what you did?" He said, "If it is the truth, tell it; but do you know what you did to your sisters and to that old man Safford?" I said, "What did I do?" I said, "Mr. Spielberg said I didn't do a thing." He said, "Why, yes; they will be held for perjury on your statement."

Mr. NELSON. Who said this?

Miss TANZER. Mr. Slade. I turned around to Mr. Spielberg, and he grinned and said, "Oh, nobody will be hurt." He said, "It is all right."

Mr. NELSON. They could not hold you for perjury for anything but identifying him.

Miss TANZER. No.

Mr. NELSON. Have they made the statements?

Miss TANZER. Oh, no; only just to identify him.

Mr. NELSON. They went before the United States commissioner?

Miss TANZER. Yes; and that is where they were indicted.

Mr. NELSON. You were indicted for perjury?

Miss TANZER. Yes.

Mr. NELSON. What else?

Miss TANZER. Blackmailing—I don't know what I am indicted for—using the mails to defraud; I don't know what it is.

Mr. CARLIN. How many indictments are there against you?

Miss TANZER. I think three—blackmailing and using the mails to defraud and perjury. I suppose I will have more when I get back.

Mr. CARLIN. Safford was indicted for perjury?

Miss TANZER. Yes.

Mr. CARLIN. So the four persons who identified this Osborne were all indicted for perjury?

Miss TANZER. Yes; and Detective McCullough is indicted for conspiracy.

Mr. CARLIN. Did he identify anybody?

Miss TANZER. No.

Mr. CARLIN. What did he do?

Miss TANZER. He was Slade's investigator. He was supposed to keep Safford from justice, or something of that sort.

Mr. CARLIN. Within your knowledge and before that meeting who testified, if anybody, that Mr. Oliver Osborne was not J. W. Osborne?

Miss TANZER. Mr. Kitchin and James W. Osborne.

Mr. CARLIN. The proprietor?

Miss TANZER. Yes.

Mr. CARLIN. Did he testify positively, or did he say he looked like him?

Miss TANZER. He said he looked like him, and then they tried to ask him whether he did not identify the picture and whether he was not ready to make the affidavit to his lawyer, and he denied it all.

Mr. CARLIN. Did he say James W. Osborne was not the man?

MISS TANZER. He was not the man, he said, but he looked like him, he said. Then, on cross-examination, they brought it out somehow or other. He is not here; he is gone.

MR. NELSON. Was there anybody else?

MISS TANZER. No; that is all I think of.

MR. CARLIN. You say that you suppose when you get back to New York there will be other indictments against you.

MISS TANZER. I don't know what they will do to me now. You can't tell. Maybe they won't dare now.

MR. CARLIN. Did this hotel proprietor testify that he saw the man with you at the hotel?

MISS TANZER. Yes.

MR. CARLIN. Did he recognize you?

MISS TANZER. No; at first he said he didn't see him.

MR. CARLIN. What did he say at last?

MISS TANZER. He said he didn't recognize me. He didn't know me, but he knew James W. Osborne was not the man.

MR. NELSON. With whom did you talk at the hotel?

MISS TANZER. I remember Mr. Safford very well.

MR. NELSON. Did Mr. Osborne talk with Mr. Safford, too?

MISS TANZER. Yes; he spoke to him for a long time. I thought he was the proprietor; I thought he was the owner of the hotel.

MR. NELSON. Where was Mr. Safford standing?

MISS TANZER. At the desk.

MR. NELSON. Where was Mr. Kitchen standing?

MISS TANZER. I just saw a glimpse of him. He didn't stay very long, just about a minute or two.

MR. NELSON. Where did he go then?

MISS TANZER. He went upstairs, and I never saw him again.

MR. NELSON. How many times in your presence did Mr. Osborne talk with Mr. Safford?

MISS TANZER. Quite a while.

MR. NELSON. It was with Mr. Safford that the arrangements were made?

MISS TANZER. Yes; he spoke to him about 20 minutes or maybe more.

MR. CARLIN. Did Safford identify him?

MISS TANZER. Yes; the minute he saw him. He wouldn't identify him by the picture at all. They tried to show him by bringing him in the court room and pointing him out there, and all this sort of thing.

MR. CARLIN. Safford has been convicted, has he not?

MISS TANZER. Yes; and now because the appeal is on, or something—there is something about interlineations. I don't know what it is, but I know it is there. They are holding it back for something.

MR. NELSON. To go back a moment to your testimony as to when you changed your statement, did you assert that you understood positively that by making that statement you would relieve yourself and sisters from any further prosecution?

MISS TANZER. Certainly, indeed.

MR. NELSON. That was your understanding?

MISS TANZER. I thought everything would be all right and there would not be another article. The papers were terrible.

MR. NELSON. You had been reading the newspapers, then?

MISS TANZER. Yes. They used to make me so sick I couldn't read them any more. Of course my friends knew.

MR. NELSON. You felt the disgrace?

MISS TANZER. Did I feel it? I feel it to this very day, indeed.

MR. NELSON. I did not quite understand what became of the paper you were writing there by yourself.

MISS TANZER. He has it.

MR. NELSON. Did you sign that?

MISS TANZER. Yes.

MR. NELSON. What did you say in that paper?

MISS TANZER. I know I told them to save the Slades and Safford and that they didn't do anything wrong nor my sisters, but they could do anything they wanted with me, providing they——

MR. NELSON (interposing). Then in the paper you only begged for mercy or begged for relief from prosecution?

MISS TANZER. From everything.

MR. NELSON. Did you admit anything in that paper?

MISS TANZER. I don't remember.

MR. GARD. He means, what did you write in the paper?

MISS TANZER. I don't remember—oh, you mean after saying that I was honestly mistaken and all that sort of thing?

MR. NELSON. Yes.

MISS TANZER. I don't know what I wrote.

MR. NELSON. You wrote for a whole hour?

MISS TANZER. I know it—no; I didn't write for a whole hour. It took them an hour before they got me to write it, because I wouldn't write it. One minute I wanted to write it, and the next minute I wouldn't. They would be so impatient they couldn't wait.

MR. NELSON. Did you understand you were writing something that was not true?

MISS TANZER. Yes; certainly.

MR. NELSON. And that your conscience told you one minute not to do it——

MISS TANZER (interrupting). Yes; and the next minute to do it, to write it. Yes; I realized that afterwards. They said everything would be all right and there would be no more articles in the papers, and that by Monday everything would be over. You can't realize what it was. It was terrible, but nobody knows it.

MR. NELSON. During that hour you were debating with yourself, did they come in and go out?

MISS TANZER. No; they stayed there and stood over me.

MR. NELSON. They stood over you for a whole hour?

MISS TANZER. Nearly that.

MR. NELSON. That is to say, from 7 to 2?

MISS TANZER. Oh, no.

MR. NELSON. That is the time this interview was on?

MISS TANZER. Yes.

MR. NELSON. But they stood there for an hour?

MISS TANZER. Until I signed; yes.

MR. NELSON. Mr. Spielberg and Mr. Bernstein?

MISS TANZER. Yes; so he could call Mrs. Osborne up, and she was so happy, I heard him say.

MR. NELSON. Who wrote the actual statement that they produced?

MISS TANZER. They didn't write it or produce any statement.

Mr. NELSON. They did not?

Miss TANZER. The only statement I made was up to the district attorney's office.

Mr. NELSON. Didn't you sign a paper or give it to them finally?

Miss TANZER. Yes.

Mr. NELSON. You handed it to Mr. Spielberg?

Miss TANZER. Yes.

Mr. CARLIN. I understood you to say the language you signed for Mr. Spielberg was about a page of paper?

Miss TANZER. Yes; not quite a page. I know it was a big yellow sheet.

Mr. CARLIN. And in that paper you exonerated James W. Osborne?

Miss TANZER. I don't remember whether I did or not. I think I did.

Mr. CARLIN. But your recollection is you signed it because Mr. Spielberg agreed that he would see that no harm came to your sisters, your counsel, or yourself?

Miss TANZER. Yes; to anybody.

Mr. CARLIN. How did you come to go down to see Mr. Spielberg?

Miss TANZER. He sent for me. I was under his bond after Mr. Farrington took the bond back.

Mr. CARLIN. Why did Mr. Farrington get off your bond?

Miss TANZER. He was afraid that he would lose out—that they would kidnap me. He called Mr. Slade up three or four times Sunday to see if I was safe. There was an automobile in front of the door and 25 detectives in the drive and around there annoying the superintendent of the house and the telephone operator. She had to cut her switchboard right off. One came up and wanted to telephone with my house telephone—"Could he use our telephone?" What was their idea? I suppose they wanted to put some kind of a—something. I don't know what you would call it.

Mr. CARLIN. Nobody came to arrange for this interview with you and Mr. Spielberg? He just telephoned and asked you to come and you did it?

Miss TANZER. I think he sent my nephew.

Mr. CARLIN. Did he telephone or send for you?

Miss TANZER. I think he telephoned first, and then afterwards my nephew went down with the bankbook, and he told him to tell me to come or telephone—no; he telephoned first, and I said I couldn't go, but I was too sick and for him to come up to our house. My nephew went down with my book that he didn't have, and he told him to tell me to be at the house at 7 o'clock.

Mr. NELSON. He was paying for your bond?

Miss TANZER. What bond?

Mr. NELSON. The bond you have.

Miss TANZER. He said he didn't want the money. I know Mr. Farrington paid \$250, but he put my sisters under \$5,000 bond, and they hadn't security for it.

Mr. NELSON. Who said to pay for the bond?

Miss TANZER. Mr. Spielberg.

Mr. NELSON. He has never collected from you?

Miss TANZER. He has our bank books.

Mr. NELSON. How much money is in your bank?

Miss TANZER. \$920 or \$940.

Mr. NELSON. \$940?

Miss TANZER. But we have used some of it now, and there is about \$600 left.

Mr. NELSON. What is the cost of that bond?

Miss TANZER. I couldn't tell you.

Mr. NELSON. You do not know how much you are paying?

Miss TANZER. No. He said at first that he would charge just what it cost him, and then later on he said he wouldn't take anything.

Mr. CARLIN. He has your bank book?

Miss TANZER. Yes.

Mr. CARLIN. And your sister's bank book?

Miss TANZER. Yes.

Mr. CARLIN. Who else's bank book has he?

Miss TANZER. That is all.

Mr. CARLIN. Have you made any assignment of your bank account, or do you still have a right to check on the bank account?

Miss TANZER. No; he has an assignment.

Mr. CARLIN. And you can not check on your own bank account?

Miss TANZER. No; I can not take any money unless I ask him for it.

Mr. CARLIN. When you ask him for it, does he let you check on it?

Miss TANZER. He has given me \$300, I think. We had to have something to live on.

Mr. CARLIN. He gave you \$300 out of your own bank account?

Miss TANZER. Yes. I think it was \$920, altogether.

Mr. CARLIN. You mean your sisters and yourself had \$920?

Miss TANZER. Yes.

Mr. CARLIN. Whatever the amount was, out of that amount you have had but \$300 to your credit?

Miss TANZER. About that.

Mr. CARLIN. On whose account have you been checking, your own or your sister's account?

Miss TANZER. I used my own first.

Mr. CARLIN. Have you checked all of yours?

Miss TANZER. Yes.

Mr. CARLIN. If you want any more money you have to go back to him for it?

Miss TANZER. Yes, indeed. We have been working all the time and trying not to take it.

Mr. CARLIN. But you have taken about \$300 of it?

Miss TANZER. Yes. That was for all summer. When we started to work we took as little as we could, because we tried to get along with what we had. He was going to do everything.

Mr. CARLIN. Miss Tanzer, I believe we are through with you.

Mr. GARD. Is there anything else you want to say to the committee?

Miss TANZER. I don't know what to say.

Mr. GARD. Is there anything you care to say that will give us any information about this matter? If so, we will be glad to hear it.

Miss TANZER. I don't know what he will do with me when I get back. I am just scared stiff. I am under the impression he will nab my sisters, and that would kill me. The thing is this: If he turns on me, I have nobody.

Mr. NELSON. You expressed some fear about what may happen?

MISS TANZER. Suppose he asks me how did I come here? Can't I say that you sent the Sergeant at Arms after me late last night and I couldn't notify him?

MR. NELSON. No; I think you had better not do that.

MISS TANZER. Why can't I do that?

MR. CARLIN. Do what?

MISS TANZER. Suppose Mr. Spielberg wants to know how I got here. Can't I say you sent the Sergeant at Arms and subpoenaed me late?

MR. CARLIN. We did subpoena you.

MR. GARD. Tell him you came on subpoena from this committee, yes, which is the fact.

MR. NELSON. I would suggest, Miss Tanzer, that you keep this committee informed of future developments until this report is in. Keep us informed of any threats of persecution.

(The witness was excused.)

MR. NELSON. I think we had better call Mr. Friedman.

MR. CARLIN. Very well; if you have anything to ask him, we will call him.

MR. FRIEDMAN. You understand, of course, the relation existing is rather in the nature of attorney and client?

MR. NELSON. Yes. I will ask Miss Tanzer about that. Miss Tanzer, are you willing to waive any rights you may have of that nature—any privilege that Mr. Friedman may have as your adviser?

MISS TANZER. Certainly; let him tell everything.

MR. NELSON. Then we will have Mr. Friedman sworn.

TESTIMONY OF MR. JAMES S. FRIEDMAN, OF NEW YORK CITY.

(The witness was duly sworn by Mr. Russell, clerk of the committee.)

MR. NELSON. What is your full name?

MR. FRIEDMAN. James S. Friedman.

MR. NELSON. What is your occupation?

MR. FRIEDMAN. Counselor at law.

MR. NELSON. When did Miss Tanzer's story come to your attention?

MR. FRIEDMAN. Some time in December, 1914.

MR. NELSON. Was this before or after she had retained the Slades as her attorneys?

MR. FRIEDMAN. That was about two months before.

MR. NELSON. Did she come to you as an attorney?

MR. FRIEDMAN. I had visited her, and she had asked me casually did I know James W. Osborne. I had told her I did not know him personally, but I did professionally. She asked me what his standing in the profession was, and I told her he was one of the best known attorneys in the city. Thereafter I called on her again, and this question was again mentioned casually.

MR. NELSON. Were you calling at the home?

MR. FRIEDMAN. At her home; yes.

MR. NELSON. Did you know her and her sisters?

MR. FRIEDMAN. I do.

MR. NELSON. How long have you known them?

MR. FRIEDMAN. About two years.

Mr. NELSON. You were then not only an acquaintance, but on a footing of intimacy with the family?

Mr. FRIEDMAN. I was.

Mr. NELSON. Do you know the reputation of these girls?

Mr. FRIEDMAN. I do.

Mr. NELSON. What is it?

Mr. FRIEDMAN. Very good; otherwise I would never have called at their home.

Mr. NELSON. That is, they are girls of good reputation?

Mr. FRIEDMAN. The four sisters are absolutely good and moral reputation without a question.

Mr. NELSON. Are you married?

Mr. FRIEDMAN. No, sir; I am not.

Mr. NELSON. Were you calling upon the sisters?

Mr. FRIEDMAN. I was calling on the house.

Mr. NELSON. Socially?

Mr. FRIEDMAN. Yes.

Mr. NELSON. How long have you been practicing law?

Mr. FRIEDMAN. Twelve years.

Mr. NELSON. Did she come to you as an attorney?

Mr. FRIEDMAN. No; she did not. I had invited her to the theater one Saturday afternoon. The peculiar incident was that they played "Damaged Goods." She acted rather nervous and fidgety during the performance. After the performance we went to take some refreshments. I found that the girl was very nervous and I tried to take her mind off from the plot of the play. We had then discussed a trip that she had taken, I think, to New Orleans. She had worked there for some time prior to the death of her mother.

Mr. NELSON. Mrs. Tanzer?

Mr. FRIEDMAN. Yes. She told me then how well she was treated in the South and how different treatment she had received recently, and she again started to tell me the Oliver story, which she had told me casually before—that some gentleman by the name of Oliver had paid attention to her and came to see her quite often and offered her jewelry and taken her out on various occasions to various places. I noticed that she became very nervous at times and had tears in her eyes, and she finally showed me three letters. I read those letters and I looked at the girl. I said, "Do you want me to advise you as a friend or in a legal capacity or in any manner? If you do, I want you to give me the full truth, as I can not advise you on the facts unless I know them all." She started to cry, and she said, "This Oliver Osborne is James W. Osborne," and then she told me the story substantially as she told it here—about the Athletic Club and about the Netherlands. It was about 12 o'clock, and I took her home. I said, "Don't get excited and don't get nervous, and above all, forget the man. You are a young girl and he is a man about 50. You can get someone nearer to your age, more suitable to you."

In reading those letters I had suspected that she did not tell me the truth, because there were some passages in there that suggested to me that she was more intimate—

Mr. NELSON (interposing). Do you mean the truth or the whole truth?

Mr. FRIEDMAN. The whole truth. In other words, she had not told me about the Plainfield incident. I suspected more of that nature

from the letters. I questioned her about the matter. I wanted to have another interview with her. I was at her house, and her sisters were present, and I did not press the matter any further, with the exception of asking where Oliver was. She said he had not been there recently. Two or three weeks after that she called me up and told me that her nephews were there, and they probably expected Oliver, also, and wouldn't I come over that afternoon. I had arrangements to go over a little later, but I couldn't, and I telephoned the house and told them I was not coming.

Some time thereafter I was up to the house again. Miss Tanzer and her sister Dora were at home. I said, "What became of Oliver?" Dora then answered, "In the Hebrew's album," or something to that effect; "well, it will be fixed pretty soon." From this I inferred they had already commenced some proceeding and taken some steps, and, as I have since learned, that was at the time when they had been up to Slade's prior to the time that the complaint was prepared. Thereafter Miss Tanzer has disappeared from my view. I could not find her; in fact, I made no attempt to find her, because I figured she had consulted Slade, as I saw from the newspapers, and I didn't want to interfere in the case.

Mr. NELSON. She never, then, at that time retained you as attorney?

Mr. FRIEDMAN. She had not retained me, with the exception of asking me on several occasions, and, as I have stated, I advised her to drop the matter, because she would be better off.

Mr. NELSON. Was it suggested that she should prosecute him or bring a suit?

Mr. FRIEDMAN. No, sir. She only told me that he had hurt her very much; that it hurt her very much to have been thrown overboard by the man; that she had loved him and had gone out every time he had invited her; and he had suddenly disappeared and broke her heart.

Mr. NELSON. She never told you personally the Plainfield story?

Mr. FRIEDMAN. She never did. The first intimation I had of it was in the newspapers, or through the newspapers.

Mr. NELSON. How did you come again to be assisting her as you are to-day?

Mr. FRIEDMAN. I live at One hundred and sixty-sixth Street in The Bronx. There is an elevated station right at the foot of One hundred and sixty-sixth Street and Third Avenue. About the month of July I met Miss Tanzer at the elevated, going down town. We were in the same car. It was rather an unpleasant incident to myself, and, as she had explained to me later, for her. I greeted her and asked how she was, and she started to cry. She said, "You know all about it; what is the use to ask?" She started to tell me of her trouble. I said, "Well, had you followed my advice you probably would not have been in the position you are in now. However, you have started the thing, and you might as well fight it through bravely." Then I asked why she had made that statement that she called "recanting." She said she couldn't explain by letter but would come to my office and see me.

I tried a case in general sessions that morning, and on returning from the general sessions I found her at my office. She started to tell me the story, and finally intimated to me that she had absolutely

no confidence in Mr. Spielberg. She said, "My friends deserted me when the crash came, and I don't know what to do." I told her to stick to her attorneys and to stick to the truth; that if she ever found herself in a position where she had to have further legal advice I would be very glad to help her.

A few weeks later I wanted to get at the bottom of this very thing, and I met a gentleman by the name of Charles Ingraham, who is a friend of the Slades. He started to talk about it. I said, "Charley, I know about this matter. I probably was the first man that heard of it." He said, "If you did, I wish you would come to the rescue of the boys." I said, "I don't know the Slades personally, but if I can help in the matter I will do so, although I do not care to appear," because at the time indictments were simply flying in the air.

Mr. NELSON. You feared that you might be indicted also?

Mr. FRIEDMAN. I will not say I feared I would be indicted, but I felt that since I had not appeared as attorney of record it was best not to look for trouble, although I must say that I have said to several friends of mine later who asked me why I am trying to be mixed up in it that "it has come to a pretty state of affairs when a citizen, particularly an attorney, must think twice before he can go before a United States tribunal and testify to the truth in a matter." I must say this is the same state of feeling to-day. Even yesterday I was advised not to take this trip by some of my friends.

Mr. NELSON. By your friends?

Mr. FRIEDMAN. By my friends; yes.

Mr. NELSON. Why do you understand your friends are concerned? Did they thus advise you because you may be indicted or for what reason?

Mr. FRIEDMAN. For the simple reason that everybody who had been in this case, with the exception of Spielberg, has had his hands full to this very day.

Mr. CARLIN. How long have you known the Tanzers before the Plainfield incident?

Mr. FRIEDMAN. Probably a year. They had lived in Harlem at the time, and I had called on them probably four or five times.

Mr. GARD. Which one did you call on?

Mr. FRIEDMAN. Miss Rae was the one that I met, and I then went to the house.

Mr. GARD. When you went to the house you went to call on Miss Rae?

Mr. FRIEDMAN. I went up to the house the evening I was introduced; that is, I walked up there with her and with some friends who introduced me, and I met the others. When I did call after this I called particularly on Miss Rae.

Mr. CARLIN. Didn't you think it was strange that she should go after talking with you and employ counsel without telling you anything about it?

Mr. FRIEDMAN. Thereafter; yes; I thought it was very strange and told her so.

Mr. CARLIN. She did not get the names of any counsel from you?

Mr. FRIEDMAN. I have not seen her from about—the statement I have made must have been probably a week before the summons was

issued—until about July. She finally made a statement to me and brought me this paper that I have shown you.

Mr. NELSON. This paper that she thinks is a promise of immunity?

Mr. FRIEDMAN. Yes. She has made several statements to me with reference to her treatment by Spielberg and others, and she has consulted me.

Mr. NELSON. You have heard her testimony as to her treatment by Spielberg, and she has waived the privilege, so that you may testify. Is there anything she has omitted?

Mr. FRIEDMAN. Yes; she has told me several things which I suppose she was ashamed to say to you.

Mr. NELSON. Was it to her discredit or to his?

Mr. FRIEDMAN. To his.

Mr. NELSON. It does not relate directly to the issue?

Mr. FRIEDMAN. No, not to the issue.

Mr. GARD. Did she tell you anything about the time she came to the Slades' office and about the filing of this suit against Osborne? Did she tell you about that?

Mr. FRIEDMAN. I was asked later on how she came to the Slades, and she told me that Mr. Steuer had recommended the Slades to her.

Mr. NELSON. You heard what she said about it. Did she tell you anything different from that at the time?

Mr. FRIEDMAN. Nothing materially different, with the exception that at times she felt bitterly toward the Slades for having brought that notoriety upon her. She always pitied them after they were indicted, but she thought if such notoriety would have been brought about, she would never have considered it at all; otherwise, she didn't know what would follow.

Mr. GARD. She meant she was not sufficiently advised of what might follow if such a suit were brought?

Mr. FRIEDMAN. Yes, sir; that is just it.

Mr. GARD. Therefore, she had a feeling of bitterness, as you expressed it, against the two Slades?

Mr. FRIEDMAN. Yes.

Mr. GARD. After they were indicted, you say she pitied them?

Mr. FRIEDMAN. Yes. She said she would do her utmost to protect them and to protect Safford, and particularly her sisters.

Mr. GARD. But her grievance was that they had not fully advised her as to the consequence that might follow—

Mr. FRIEDMAN. As to the notoriety.

Mr. GARD. The notoriety and the different unpleasant features that might follow such a case?

Mr. FRIEDMAN. I would not say anything else—just the notoriety, because the worst features were entirely unexpected, not only by her, but I will say as a member of the bar in New York City that the rest of the things were entirely unexpected. We never heard of it before. I never heard of another case in my 12 years practice, nor in any books have I ever read or heard of a similar proceeding?

Mr. GARD. Of course when a suit was started against a man of Mr. Osborne's prominence, there would be necessarily a good deal of notoriety.

Mr. FRIEDMAN. There have been other men of prominence sued, but the United States Government was never used to defend them.

Mr. GARD. I say if a civil suit were started against any man of

Mr. Osborne's prominence, it would result in a great deal of newspaper notoriety.

Mr. FRIEDMAN. As a rule, not until the trial—not on the day the summons was filed.

Mr. GARD. Only in the event that it is brought to trial?

Mr. FRIEDMAN. In the event it is brought to trial, and when the various exhibits are read.

Mr. CARLIN. I think that is all, Mr. Friedman. We thank you very much.

(The witness was excused.)

(Thereupon at 5 o'clock p. m. the committee adjourned.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Friday, March 24, 1916.

The subcommittee met, pursuant to notice, at 10.30 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson; also, Mr. Robert P. Hill, counsel for Frank Buchanan.

Mr. CARLIN. The committee will come to order. Call the list of witnesses, Mr. Clerk.

Mr. RUSSELL. Abraham L. Berman, John J. Hannan, Albert J. McCullagh, Christopher K. Kasse, Frank D. Safford, Martin W. Littleton—

Mr. CARLIN. Mr. Littleton will be here at 3 o'clock.

Mr. RUSSELL. Abraham Weinhouse, Samuel Hershenstein.

Mr. CARLIN. Just ask the witnesses to take seats in the anteroom until they are called.

Mr. RUSSELL. Gentlemen, while the hearing will be public, the committee wishes the witnesses to retire to the anteroom until they are called.

Mr. CARLIN. Call as the first witness Mr. Abraham L. Berman.

TESTIMONY OF MR. ABRAHAM L. BERMAN.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. State your name and residence and professional occupation.

Mr. BERMAN. Residence or office?

Mr. CARLIN. Give both.

Mr. BERMAN. Residence, 55 West One hundred and tenth Street, New York City; office, 346 Broadway, New York City; attorney at law.

Mr. GARD. How long have you been an attorney at law, Mr. Berman?

Mr. BERMAN. Since about 1912.

Mr. GARD. Were you ever employed in the office of Slade & Slade, attorneys at law, in New York?

Mr. BERMAN. I was.

Mr. GARD. When?

Mr. BERMAN. Prior to my admission to the bar.

Mr. GARD. When were you employed there?

Mr. BERMAN. I believe it was during the years 1910 and 1911.

Mr. GARD. Refreshing your recollection, or calling your attention to a definite time, were you employed there in 1915?

Mr. BERMAN. No, sir.

Mr. GARD. Did you have an office of your own at that time?

Mr. BERMAN. Yes, sir.

Mr. GARD. Were you associated with anyone?

Mr. BERMAN. No, sir.

Mr. GARD. Practicing individually?

Mr. BERMAN. Yes, sir.

Mr. GARD. Were you in the office of Slade & Slade about March 22, 1915?

Mr. BERMAN. Well, I visit the office quite often. I believe I was there on that day. My present recollection is that I was.

Mr. GARD. When you were employed there what was your employment, please?

Mr. BERMAN. Managing clerk for Slade & Slade.

Mr. GARD. Managing clerk?

Mr. BERMAN. Yes, sir.

Mr. GARD. By that do I understand that you had charge of the management of the office work?

Mr. BERMAN. Well, a clerkship; all the things that go with that.

Mr. GARD. Do you remember going to Paterson, N. J., with Mr. David Slade and Mr. McCullagh and Mr. Hannan and Mr. Darling?

Mr. BERMAN. Yes, sir.

Mr. GARD. How did you happen to go with these men at that time?

Mr. BERMAN. Why, as I stated before, I usually come into the office around lunch hour and have lunch with Mr. Slade when I am in the neighborhood.

Mr. GARD. Which Mr. Slade?

Mr. BERMAN. Mr. David Slade.

Mr. GARD. Yes.

Mr. BERMAN. And I had come in there on that particular day—I really do not know the exact date—and I asked Mr. David Slade if he was going out to lunch, and he said he would go out in about a few minutes; and we went out to lunch, down to Childs, next door there; and after that—after we got through lunch—he asked me to accompany him on a trip to Paterson; he said it would not take long, and I accompanied him on that automobile trip.

Mr. GARD. Did you go by automobile?

Mr. BERMAN. Yes, sir.

Mr. GARD. Do I understand that you did not have any previous arrangement to go, before the time that you happened in there for luncheon?

Mr. BERMAN. None at all; in fact, I phoned my office I would return about 2.30 or 3 o'clock.

Mr. GARD. Who were these other gentlemen that went with you?

Mr. BERMAN. There was Mr. Darling—

Mr. GARD (interposing). Who is he?

Mr. BERMAN. I subsequently found out he was the gentleman who knew Mr. Safford, and who came to Mr. Slade's office, stating that

he could locate Mr. Safford. That was the first time I had ever seen him.

Mr. GARD. Was he a detective?

Mr. BERMAN. No; he was not a detective. I think he said he was a printer.

Mr. GARD. Did he live in Paterson?

Mr. BERMAN. At that time, I think he said he lived in New York, but he had, at some time, resided in Paterson.

Mr. GARD. McCullagh and Hannan were detectives, were they?

Mr. BERMAN. They were detectives; yes.

Mr. GARD. Were they employed by Slade & Slade?

Mr. BERMAN. That I do not know.

Mr. GARD. Do you know whether Mr. McCullagh had employment as a personal investigator by Mr. Slade in Mr. Slade's office?

Mr. BERMAN. I heard subsequent to that time, but I did not know at that time.

Mr. GARD. You went down, and the gist of your trip was that you did find Safford?

Mr. BERMAN. Later on. We did not find him in Paterson, but we had to go—

Mr. GARD (interposing). You found him at Greenwood?

Mr. BERMAN. At Greenwood Lake.

Mr. GARD. At Greenwood Lake?

Mr. BERMAN. Yes, sir.

Mr. GARD. Let me ask you; did you testify in the case which was prosecuted against Mr. Safford, and in which he was convicted of perjury?

Mr. BERMAN. Yes, sir.

Mr. GARD. You did testify in that case?

Mr. BERMAN. I did.

Mr. GARD. Is your full and complete testimony about the proceedings, and about the circumstances in the Safford case, in the record in that case?

Mr. BERMAN. I believe it is. I was subpoenaed by the—

Mr. GARD (interposing). Defendant?

Mr. BERMAN. No; not by the defendant; by the Government, and they never called me, but the defendant called me.

Mr. GARD. If it is in the record we do not care to go further into that testimony, but there are some things here that I desire to ask you about. Did you ever have any talk with a man by the name of Hershenstein, one of the assistants in the office of District Attorney Marshall?

Mr. BERMAN. I had at least two meetings with Mr. Hershenstein.

Mr. GARD. With respect to the trial of Safford, when was the first meeting?

Mr. BERMAN. The first meeting was at the time I was subpoenaed to appear before the grand jury. The notice read to appear in Mr. Hershenstein's office before going into the grand jury room—not in Mr. Hershenstein's office, but it stated a certain room there, and I went in there, and Mr. Hershenstein and Mr. Wood, I believe, spoke to me at the time.

Mr. GARD. They were in the office at the time?

Mr. BERMAN. They were in the office, and they asked me about the matter, and I told them I would tell my story before the grand jury, and then I appeared before the grand jury. That was the same day.

Mr. GARD. What did they say when you told them that?

Mr. BERMAN. They asked me what I knew about the Safford case and about the trip I had made out to Greenwood Lake, and after that, this same day, I appeared before the grand jury, and I saw Mr. Hershenstein the very next day. It seemed that I had testified in the grand jury room that I really did not know the exact date that I went to Greenwood Lake, but I said I could fix the date from the fact that I had telephoned from Greenwood Lake to my home, stating that I would be home a little later, and that I could verify the date, perhaps, by my diary, and they asked me if I would do that, and let them know later. The next day Mr. Hershenstein phoned me and asked me to come down and see him, and I came down, and he presented me with a little slip of the telephone company; they issue certain slips, showing the phone number and the date, and on this slip he had the date that I had phoned from Greenwood Lake to my home, and that was not the date I had phoned. It was on a Sunday. He said that would fix the date as being on Sunday.

Mr. GARD. On Sunday, was it?

Mr. BERMAN. It was on Monday I went to Greenwood Lake. I do not know the exact date. I told him I did not care what the slip called for, I knew I had not been there on Sunday, because I had never been down town to Slade's office on any Sunday.

Mr. GARD. Did he say anything to you about changing your testimony—to give a different date?

Mr. BERMAN. He asked whether that would refresh my memory and make me believe that that was the date, and I said "No," because I had eaten at Child's on that day, and Child's was not open on Sunday, and I never went down to the office on Sunday.

Mr. GARD. Did he say anything or do anything, except present this slip to you and ask you to look at that for the purpose of refreshing your recollection as to the date?

Mr. BERMAN. That is all. Then, after I told him, he said "That is all."

Mr. GARD. Did he ask you at any time to change your testimony?

Mr. BERMAN. He never did; no.

Mr. GARD. Or intimate that you should change it to avoid prosecution yourself?

Mr. BERMAN. No, sir.

Mr. GARD. Did he make any threats of any kind to you at any time?

Mr. BERMAN. No threats to me; no, sir.

Mr. GARD. What was his conduct while you were in the room? Was it pleasant?

Mr. BERMAN. Very pleasant.

Mr. GARD. No effort made to force you to do anything?

Mr. BERMAN. No; except that that slip might change my recollection.

Mr. GARD. I understand that the whole thing which you wish to convey to the committee is that you testified in the grand jury as to a date——

Mr. BERMAN. Yes, sir.

Mr. GARD (continuing). And that then you came to Mr. Hershenstein's office at a subsequent time?

Mr. BERMAN. The day following. I told them they could fix the date probably by the telephone slip.

Mr. GARD. You told them that?

Mr. BERMAN. Yes, sir.

Mr. GARD. And then, the next day, Mr. Hershenstein had what purported to be this telephone slip?

Mr. BERMAN. Yes; he said he had it from the telephone company.

Mr. GARD. From the telephone company?

Mr. BERMAN. Yes.

Mr. GARD. And he presented that to you for the purpose of refreshing your recollection?

Mr. BERMAN. That is what it was for.

Mr. GARD. And, notwithstanding that, you adhered to your former story or testimony?

Mr. BERMAN. Absolutely.

Mr. GARD. Did you later determine whether or not this slip which was presented to you, had been obtained from the telephone company?

Mr. BERMAN. I never made any efforts to ascertain, and I never went back to the grand jury room and told them the date that I discovered.

Mr. GARD. Were you indicted in this same case?

Mr. BERMAN. No, sir.

Mr. GARD. You say you did not go back to the grand jury room?

Mr. BERMAN. I did not go back.

Mr. GARD. You had no further connection with any branch of the matter after—

Mr. BERMAN (interposing). After that time.

Mr. GARD. After you talked with Mr. Hershenstein about the telephone slip?

Mr. BERMAN. Then, I was subpoenaed to appear in the—

Mr. GARD (interposing). Safford case?

Mr. BERMAN. Yes; and that is all. I have never been down to the district attorney's office since that time.

Mr. GARD. You were subpoenaed by the Government, but never called?

Mr. BERMAN. Never called.

Mr. GARD. But you were called by the defense?

Mr. BERMAN. Yes.

Mr. GARD. Now, at any time during your association or during the time you were brought before the district attorney's office for questioning or investigation, was there any effort made to coerce your or to induce—

Mr. BERMAN (interposing). None.

Mr. GARD (continuing). To induce you to tell something which was not true?

Mr. BERMAN. No, sir.

Mr. GARD. Against either Slade or Safford or anybody connected with the case?

Mr. BERMAN. Why, except that they asked me to make sure that what I said was the truth.

Mr. GARD. Yes.

Mr. BERMAN. Mr. Wood——

Mr. GARD (interposing). But what I am trying to get at is: Was there any effort to cause you to say something that was not true?

Mr. BERMAN. No, sir.

Mr. GARD. Or to change your testimony in any way?

Mr. BERMAN. None at all.

Mr. GARD. So as to implicate either the Slades or Safford or any one else?

Mr. BERMAN. No, sir.

Mr. GARD. Or to have you testify to something that was not true or which would implicate them in some criminal transaction?

Mr. BERMAN. No, sir.

Mr. GARD. Nothing of that kind?

Mr. BERMAN. Nothing of that kind. They had asked me about some money that I had given to Mr. Slade to give Safford up in the hotel there.

Mr. GARD. That was that \$10?

Mr. BERMAN. Yes.

Mr. GARD. You testified to that, I suppose, in the case?

Mr. BERMAN. Mr. Bossevain asked me that in the grand jury room. I found that was his name later.

Mr. GARD. You testified to that in the Safford case, did you not?

Mr. BERMAN. I do not know that I did.

Mr. GARD. We would be glad to hear your statement of it.

Mr. BERMAN. I do not know that I testified to it.

Mr. GARD. I say that we would be glad to hear your statement of it now, if you care to make a statement about it.

Mr. BERMAN. Well, Mr. Slade did not have any cash, and he asked me whether I would let him have some money there. That was all.

Mr. GARD. And you gave his \$10, and he gave it to Safford; is that it?

Mr. BERMAN. Yes.

Mr. GARD. To pay Safford's expenses?

Mr. BERMAN. Safford had—he said he had 21 or 22 cents, and he did not want to come to New York at all, and Slade was going to go away, and he said he would come the next day anyway. This man Kasse induced him to come here to New York, at least, and he said he did not have a dollar; he would have to live some place, and would have to have his carfare and things of that kind, and that was the cause of giving him that \$10.

Mr. GARD. You gave David Slade \$10?

Mr. BERMAN. I lent it to him.

Mr. GARD. I assumed it was a loan.

Mr. BERMAN. Yes.

Mr. GARD. And he transferred it to Safford to pay his expenses to New York.

Mr. BERMAN. Yes; to New York.

Mr. GARD. And during such time as he would be in New York?

Mr. BERMAN. Well, I do not know how long he was to be there.

Mr. GARD. He could not be there very long on \$10.

Mr. BERMAN. No, sir. The fare, I think, is over \$4 one way from that place. Mr. Slade had a subpoena in his pocket for the man.

Mr. NELSON. What man? Safford?

Mr. BERMAN. For this man Safford. He showed me the subpoena when we went up in the automobile.

Mr. GARD. I am directed by the chairman of the committee to ask you if you were present at any time when Safford identified any persons.

Mr. BERMAN. I was present at the time that Mr. Slade showed this picture of Mr. James W. Osborne to Safford, and Safford says, "That looks like the man, but I would rather see the man face to face and identify him." He says, "That looks like the man."

Mr. GARD. Where was that? At Greenwood Lake?

Mr. BERMAN. Yes; and then he showed him a picture of the girl Tanzer, and he says, "That is absolutely the girl; there is no question about it." He says, "She was a small girl," and he described the man and the girl.

Mr. GARD. Were you present at any time when he identified them in person?

Mr. BERMAN. No.

Mr. GARD. Were you present at any other time—

Mr. BERMAN (interposing). No other time, except—

Mr. GARD (interposing). When Safford saw either Osborne or Rae Tanzer?

Mr. BERMAN. No, sir.

Mr. GARD. Just at the time of the identification of the pictures?

Mr. BERMAN. The picture.

Mr. CARLIN. What did Safford say about his ability to identify the man, if he should see him?

Mr. BERMAN. About what?

Mr. CARLIN. About his ability to identify the man, if he should see him?

Mr. BERMAN. He says there would be no question in his mind. He says he would never forget that face. He says the man was a dead-beat, and he cheated him out of the room rent there, and he never would forget the face, if he saw it in a crowd of a thousand, but he wants to see the man face to face.

Mr. GARD. He said that he cheated him out of the room rent?

Mr. BERMAN. He did not pay some room rent at the hotel, he claimed.

Mr. GARD. This same Osborne?

Mr. BERMAN. This same Osborne. He says he would know him in a minute.

Mr. CARLIN. You may stand aside.

TESTIMONY OF MR. JOHN J. HANNAN.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. NELSON. Give your street address in New York.

Mr. HANNAN. 45 West Thirty-fourth Street, New York City.

Mr. NELSON. What is your business, Mr. Hannan?

Mr. HANNAN. I am the proprietor of a detective agency.

Mr. NELSON. Are you the principal?

Mr. HANNAN. I am the principal; yes, sir.

Mr. NELSON. How many assistants have you?

Mr. HANNAN. Well, they vary; at times I have eight.

Mr. NELSON. Approximately?

Mr. HANNAN. About six.

Mr. NELSON. How long have you been engaged in your business?

Mr. HANNAN. In this present business, I have been running it myself for about three years.

Mr. NELSON. Three years?

Mr. HANNAN. Yes.

Mr. NELSON. When were you engaged by the Slades—Slade & Slade?

Mr. HANNAN. To the best of my recollection it was on the 8th of March.

Mr. NELSON. What year?

Mr. HANNAN. 1915.

Mr. NELSON. State the occasion for their call for your services.

Mr. HANNAN. Mr. David Slade phoned up to my office and requested me to come down to see him. I went down that day; that was on the 8th of March he phoned, and I went down the same afternoon, and he outlined the case—he said he had an investigation to make in regard to a breach-of-promise case.

Mr. NELSON. May I interrupt there? Had you had any previous conversation with him?

Mr. HANNAN. None whatever.

Mr. NELSON. Had you known him personally?

Mr. HANNAN. Yes, sir.

Mr. NELSON. Had you known him for some time?

Mr. HANNAN. For possibly two years.

Mr. NELSON. Had you made any investigation for him before that?

Mr. HANNAN. Yes, sir.

Mr. NELSON. In what case?

Mr. HANNAN. Why, we investigated a case—we called it “the New Haven case.” It was some sort of an incendiary case.

Mr. NELSON. You had had business relations with him before?

Mr. HANNAN. Yes.

Mr. NELSON. Now state what occurred in your conversation with him.

Mr. HANNAN. Mr. Slade went over the case—the Osborne case, he called it—and showed me a photograph that purported to be a photograph of James W. Osborne, and he told me—he instructed me to send a competent man out to make a thorough investigation to determine whether Mr. James W. Osborne was the man that accompanied Miss Tanzer to Plainfield on a certain occasion.

Mr. NELSON. Mr. Slade, I presume, in that conversation stated the facts.

Mr. HANNAN. He stated the facts; yes, sir.

Mr. NELSON. And you were to investigate certain facts?

Mr. HANNAN. I was to make a thorough investigation and determine whether Mr. Osborne was the man.

Mr. NELSON. Now, what steps did you take in that investigation?

Mr. HANNAN. I assigned one of my operatives, a man named McCullagh.

Mr. NELSON. Had he had previous experience?

Mr. HANNAN. Yes, sir; he was quite a competent detective-agency man.

Mr. NELSON. Was he acquainted with the Slades at the time?

Mr. HANNAN. Yes; he was acquainted with the Slades.

Mr. NELSON. Had he served them before?

Mr. HANNAN. He had served them before this in other cases.

Mr. NELSON. Did Mr. Slade send him, or did you send him?

Mr. HANNAN. I sent him. I assigned Mr. McCullagh to the work.

Mr. NELSON. Did he make a report to you?

Mr. HANNAN. He reported to me every day; yes, sir.

Mr. NELSON. Can you give the gist of his reports?

Mr. HANNAN. Why, I regret to say that I can not, Mr. Nelson, because I was obliged to turn over my carbon copies to the Government—to the district attorney, to Mr. Marshall's office.

Mr. NELSON. Did he report?

Mr. HANNAN. He did report; yes, sir.

Mr. GARD. What is that you said about being obliged to turn in your carbon copies to the district attorney's office?

Mr. HANNAN. Mr. Marshall's office summoned me down there, or served a duces tecum on me, rather, to produce the copies of the reports.

Mr. GARD. After that, did they retain them?

Mr. HANNAN. Yes, sir; they retained them.

Mr. GARD. With your consent?

Mr. HANNAN. They did not ask for my consent in the matter.

Mr. NELSON. Have you made a request to get them back?

Mr. HANNAN. No; I have not.

Mr. NELSON. Did Mr. McCullagh state to you in these reports with reference to his talk with Safford, the clerk?

Mr. HANNAN. Why, yes. One of the reports covers that conversation.

Mr. NELSON. We have not the originals. Can you give the gist of the report of his conversation with Safford?

Mr. HANNAN. I do not think I could do justice from memory—depending upon my memory to state precisely what was in that report. You see, the investigation proper covered, I think, about six days.

Mr. NELSON. Six days?

Mr. HANNAN. Six days in all.

Mr. NELSON. How many reports were made to you?

Mr. HANNAN. About six reports.

Mr. NELSON. How much money did you receive from the Slades for doing this work?

Mr. HANNAN. Why, I received, at one time, I think I received \$150, and at another time I received \$100.

Mr. NELSON. \$250?

Mr. HANNAN. Yes; up to that time.

Mr. NELSON. And you received it for the purpose of investigation?

Mr. HANNAN. Yes, sir.

Mr. NELSON. And were you paid beforehand or after the investigation was made?

Mr. HANNAN. After.

Mr. NELSON. Did you accompany Mr. Slade at any time to Paterson, N. J.?

Mr. HANNAN. Yes, sir.

Mr. NELSON. For what purpose?

Mr. HANNAN. For the purpose of finding Mr. Safford—locating Mr. Safford.

Mr. NELSON. Did you find him?

Mr. HANNAN. I did not continue on that investigation that day. I came back from Paterson. We ascertained in Paterson, from inquiries we made there, that Mr. Safford was at Greenwood Lake. I did not go to Greenwood Lake. I returned to New York.

Mr. NELSON. Who were with you then?

Mr. HANNAN. Why, there was Mr. David Slade, Mr. Berman McCullagh, and I forget that other fellow's name now; there was one other—

Mr. NELSON (interposing). Mr. Darling?

Mr. HANNAN. Mr. Darling, and myself.

Mr. NELSON. And the chauffeur?

Mr. HANNAN. And the chauffeur; yes.

Mr. NELSON. Where did they go?

Mr. HANNAN. I left them in Paterson. I believe they went right on to Greenwood Lake.

Mr. NELSON. And you returned to New York?

Mr. HANNAN. And I returned to New York; yes, sir.

Mr. NELSON. Can you say, from recollection of these reports, that your assistant, Mr. McCullagh, ever identified or ever heard Mr. Safford, the clerk, identify Mr. J. W. Osborne as "Oliver Osborne"?

Mr. HANNAN. May I ask whether you are speaking of the reports now?

Mr. NELSON. Your reports—your recollection of the reports from your assistant.

Mr. HANNAN. No; there was nothing in the reports to show that Mr. Safford identified James W. Osborne, because up to that time he had not seen Mr. Osborne.

Mr. NELSON. But from the photograph?

Mr. HANNAN. Mr. Safford, I understood, declined to identify Mr. Osborne from the photograph.

Mr. NELSON. Did he make any report, or did he state anything in these reports concerning William J. Kitchen, the proprietor of the Kensington Hotel?

Mr. HANNAN. Yes, sir; he had, to the best of my recollection, two or three interviews with Mr. Kitchen.

Mr. NELSON. And what did he report to you that Mr. Kitchen said?

Mr. HANNAN. Well, Mr. Kitchen was noncommittal in the matter.

Mr. NELSON. Noncommittal?

Mr. HANNAN. Yes, sir.

Mr. NELSON. Did Mr. McCullagh state that Mr. Kitchen had said to him that this J. W. Osborne was Oliver Osborne, or that "Oliver Osborne" was J. W. Osborne, or anything of that kind?

Mr. HANNAN. To the best of my recollection, Mr. McCullagh reported that Mr. Kitchen did say the photograph that Mr. McCullagh showed to Mr. Kitchen looked like "Oliver Osborne."

Mr. NELSON. The photograph?

Mr. HANNAN. The photograph.

Mr. NELSON. Were you ever taken to the grand jury room?

Mr. HANNAN. Yes, sir.

Mr. NELSON. State the occasion.

Mr. HANNAN. The dates?

Mr. NELSON. Yes, if you can.

Mr. HANNAN. I can not state the dates, Mr. Nelson.

Mr. NELSON. For what purpose were you brought to the grand jury?

Mr. HANNAN. Why, the usual examination in connection with my work on the case.

Mr. NELSON. What was being investigated?

Mr. HANNAN. The questions were precisely along the same lines that you are asking now.

Mr. NELSON. What case was pending?

Mr. HANNAN. The Osborne case.

Mr. NELSON. The Osborne case?

Mr. HANNAN. Yes.

Mr. NELSON. Were you permitted to read the reports to the grand jury?

Mr. HANNAN. No, sir.

Mr. NELSON. Who objected?

Mr. HANNAN. There was not any mention about the reports—that is, a reading of them.

Mr. NELSON. Did you suggest that you had reports?

Mr. HANNAN. I had turned over the reports to Mr. Marshall's office previous to that.

Mr. NELSON. Mr. Marshall had the reports previous to that time?

Mr. HANNAN. Mr. Marshall had the reports on that occasion; yes, sir.

Mr. NELSON. So far as you know, then, these reports were before the grand jury?

Mr. HANNAN. So far as I know, yes; although I did not see them.

Mr. NELSON. How?

Mr. HANNAN. I did not see them.

Mr. NELSON. You do not know that they were before the grand jury?

Mr. HANNAN. I do not know that they were; no, sir.

Mr. NELSON. Did you testify before the grand jury as to the contents of these reports in any way?

Mr. HANNAN. Well, I testified as to the data that was contained in the reports; yes, sir.

Mr. NELSON. I do not want your testimony, but, as a matter of fact, did you testify, giving the contents of the reports?

Mr. HANNAN. Exactly; yes, sir.

Mr. NELSON. How?

Mr. HANNAN. Precisely that.

Mr. NELSON. Were you a witness subsequently at a trial?

Mr. HANNAN. Yes.

Mr. NELSON. What trial?

Mr. HANNAN. The Osborne trial.

Mr. NELSON. The Osborne trial?

Mr. HANNAN. Yes, sir.

Mr. NELSON. Did you testify as to these reports at that trial?

Mr. HANNAN. Yes, sir.

Mr. NELSON. How many times were you called to the district attorney's office?

Mr. HANNAN. Well, the first occasion was upon the delivery of the reports to Mr. Marshall's office. I delivered them to Mr. Hershenstein. That was the first occasion.

Mr. NELSON. And the second occasion?

Mr. HANNAN. The second occasion was the time I was called before the Federal grand jury.

Mr. NELSON. Were you asked to in any way change your testimony by Mr. Hershenstein, or was he satisfied with your testimony?

Mr. HANNAN. Mr. Hershenstein, after I delivered the carbon copies of those reports to him, he asked me there in his office whether I was willing to make a voluntary statement. I told him I had no objection whatever to making a voluntary statement; that I had nothing to conceal; and I made the voluntary statement.

Mr. NELSON. To him?

Mr. HANNAN. To him.

Mr. NELSON. Your investigations, of course, in this whole matter. were, as a matter of course, in business and in good faith?

Mr. HANNAN. Yes, sir; exactly; entirely so.

Mr. NELSON. Do you know Mr. J. W. Osborne?

Mr. HANNAN. No, sir; not personally.

Mr. NELSON. And you never saw "Oliver Osborne."

Mr. HANNAN. I have never seen him; no, sir.

Mr. NELSON. Have you any facts in your possession, or from your reports, that enable you to identify J. W. Osborne as "Oliver Osborne?"

Mr. HANNAN. No, sir.

Mr. NELSON. Have you expressed any conclusion with reference to that matter?

Mr. HANNAN. None whatever.

Mr. NELSON. In any report or in any conversation?

Mr. HANNAN. In no report or in no conversation.

Mr. CARLIN. Are there any questions you want to ask him, Mr. Gard?

Mr. GARD. No.

Mr. CARLIN. I want to ask you, Mr. Hannan, have you copies of your reports with you?

Mr. HANNAN. No, sir; I have not.

Mr. CARLIN. If the committee wants them, they are where you can get them, are they?

Mr. HANNAN. The original reports were sent to Mr. Slade in the usual way, by mail, after they were typewritten in the office, and the carbon copies were given to Mr. Marshall's office.

Mr. CARLIN. You have no copy of your own?

Mr. HANNAN. I have no copy of my own; no, sir.

Mr. CARLIN. That is all. Swear Mr. Kasse.

TESTIMONY OF MR. CHRISTOPHER K. KASSE.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Give your name, place of residence, and your occupation.

Mr. KASSE. Christopher K. Kasse; place of residence, Paterson, N. J.; my business, in Greenwood Lake, Orange County, N. Y.

Mr. CARLIN. What business?

Mr. KASSE. Hotel; I have a summer hotel.

Mr. CARLIN. Were you keeping that hotel on March 22, 1915?

Mr. KASSE. Yes, sir.

Mr. CARLIN. Do you recall a visit of Mr. Slade and others to your place—Mr. Slade, Mr. Darling, and others to your place at that time?

Mr. KASSE. Yes, sir.

Mr. CARLIN. Tell us what happened when they came to your place.

Mr. KASSE. Slade, McCullagh, Darling, and two others—I do not know their names—drove up there in an automobile on the 22d day of March. They had lunch, and I believe Slade had a subpoena for Safford, and they took him along with them.

Mr. CARLIN. Go ahead.

Mr. KASSE. As far as I can remember that is about all there is to it.

Mr. CARLIN. Did you hear the conversation between the Slades and Safford?

Mr. KASSE. I heard just a few remarks when I went upstairs. I was downstairs in my barroom. Mr. Safford was getting some lunch ready for these boys, and I went upstairs to see how he was progressing, and I heard a remark—I suppose they were photographs, but they were done up in a parcel, package, and there was two of them; and I remember Mr. Safford saying that he could not identify James W. Osborne by that profile—that photograph—although I did not see the photograph, but I presumed that they were in those parcels. That is all I heard of the conversation.

Mr. CARLIN. Do you know how Mr. Safford came to go to New York? Did you induce him to go there?

Mr. KASSE. To my place?

Mr. CARLIN. No, how did he come to go to New York to talk with the Slades further about this matter?

Mr. KASSE. He was asked to go by Slade. He was asked to accompany them.

Mr. CARLIN. Did you have anything to do with inducing him to go?

Mr. KASSE. Well, I told him if he could be of any possible benefit to go.

Mr. CARLIN. Were you able to judge from what took place as to whether that was the first time that the Slades had ever been in contact with Safford or conversed with him?

Mr. KASSE. I do not understand you, sir.

Mr. CARLIN. Were you able to judge, from what took place in your presence, as to whether that was the original meeting of the Slades and Safford?

Mr. KASSE. Well, of course, I had an idea what it was all about, because Mr. Safford, previous to this—three or four days previous to this, on our way going to the post office, mentioned to me—we had been reading this Osborne case, and he says, "No doubt, I will be asked to appear at this trial as a witness." That is all I knew of it.

Mr. CARLIN. Could you tell from the conversation between Slade and Safford as to whether that was the first time they had ever met or not?

Mr. KASSE. I could not.

Mr. CARLIN. What impression did it leave on your mind as to whether it was the first meeting between them?

Mr. KASSE. No, I could not; I do not know whether they ever met before or not.

Mr. CARLIN. Did you tell of this incident to the district attorney or to any of his assistants?

Mr. KASSE. Did I what?

Mr. CARLIN. Did you tell of this incident to the district attorney or any of his assistants?

Mr. KASSE. Did I tell that to them?

Mr. CARLIN. Yes.

Mr. KASSE. I don't remember.

Mr. CARLIN. Were you requested or summoned to come to the district attorney's office?

Mr. KASSE. Yes.

Mr. CARLIN. Which; were you requested or summoned?

Mr. KASSE. I was summoned.

Mr. CARLIN. What happened after you got down there? You were summoned to appear where?

Mr. KASSE. At the Federal office, in the city of New York.

Mr. CARLIN. Are you sure you received a summons or a request?

Mr. KASSE. I got a summons.

Mr. CARLIN. Do you remember the language of it?

Mr. KASSE. It was served on me by one of the marshals.

Mr. CARLIN. Was it a card?

Mr. KASSE. It was a card; yes, sir.

Mr. CARLIN. Do you remember whether it said to you or requested you to appear at the district attorney's office, or whether you were summoned to appear before the grand jury?

Mr. KASSE. Really, I don't know, but I think it was a request that I should be there at the inquiry.

Mr. CARLIN. The impression made on your mind is, then, that a request of that sort is equivalent to a summons?

Mr. KASSE. Yes, sir.

Mr. CARLIN. So you answered——

Mr. KASSE. Of course, I do not understand those things as I ought to, but I supposed it was a summons to appear as a witness.

Mr. CARLIN. You know the difference between a request and a summons, do you not?

Mr. KASSE. I do not know a great deal about the business. Of course, if I am requested, I suppose it will be verbally, and a summons, I thought, would be in a written matter.

Mr. CARLIN. Then, anything in writing would impress you as if it were a summons?

Mr. KASSE. So far as I know, it was a summons, but, of course, I would not swear to it.

Mr. CARLIN. Have you got the paper with you?

Mr. KASSE. No, sir.

Mr. CARLIN. Have you got it anywhere?

Mr. KASSE. No; I have nothing pertaining to that trial.

Mr. CARLIN. You went, any way?

Mr. KASSE. Yes; I went.

Mr. CARLIN. To Mr. Marshall's office?

Mr. KASSE. Yes.

Mr. CARLIN. Whom did you see when you got there?

Mr. KASSE. I went twice.

Mr. CARLIN. Whom did you see the first time?

Mr. KASSE. Mr. Hershenstein.

Mr. CARLIN. Whom did you see the second time?

Mr. KASSE. Mr. Hershenstein. He was the only one I saw.

Mr. CARLIN. Tell us what took place there between you and Mr. Hershenstein.

Mr. KASSE. Well, I waited about the building, and I really—I forget! it is so long ago. I know there was nothing happened, I know, the first time that I went.

Mr. CARLIN. What did you talk about?

Mr. KASSE. Asking me about the same question that you are asking me now. He asked me about Mr. Safford, and when he came to my place, how long he was there; and that is about all there was about it. It all related to Mr. Safford.

Mr. CARLIN. Was Safford employed by you at that time?

Mr. KASSE. Yes, sir; Safford was working for me. He worked for me from the 15th to the 22d of March—just one week. Excuse me; it was after Safford was taken away from my place that I was called down to New York.

Mr. CARLIN. Did Safford resign his place with you?

Mr. KASSE. He resign?

Mr. CARLIN. Yes.

Mr. KASSE. I let him go.

Mr. CARLIN. You mean you dismissed him?

Mr. KASSE. Yes, sir. I did not want him back after this notoriety. My wife objected to the notoriety it might give the house.

Mr. CARLIN. You mean the notoriety in connection with the Osborne matter?

Mr. KASSE. Yes, sir.

Mr. CARLIN. He had not gotten any notoriety up to that time, had he?

Mr. KASSE. Sir?

Mr. CARLIN. I say, he had not gotten into any notoriety up to that time, had he?

Mr. KASSE. No, sir. We thought very well of Mr. Safford while he was with us.

Mr. CARLIN. It was the anticipation of notoriety that occasioned you to dismiss him?

Mr. KASSE. Yes, sir.

Mr. CARLIN. Did you caution Mr. Safford in any way about what his testimony should be in the matter?

Mr. KASSE. Sir?

Mr. CARLIN. Did you caution him in any way about what his testimony should be?

Mr. KASSE. No, sir. I said nothing to him whatever regarding what he should say, or what he should not say, because I knew nothing about it.

Mr. CARLIN. Did you ever see him afterwards?

Mr. KASSE. Yes.

Mr. CARLIN. Did he discuss this case with you?

Mr. KASSE. No, sir.

Mr. CARLIN. Did you discuss it with him?

Mr. KASSE. No, sir.

Mr. CARLIN. Did you ask him if he had identified the man?

Mr. KASSE. No. He told me that without my asking him.

Mr. CARLIN. He did?

Mr. KASSE. Yes, sir.

Mr. CARLIN. What did he tell you?

Mr. KASSE. He told me that he was positive that James W. Osborne was the man.

Mr. CARLIN. Did he tell you how he had reached that conclusion?

Mr. KASSE. Sir?

Mr. CARLIN. Did he tell you how he had reached that conclusion?

Mr. KASSE. Yes; by the features of the face, of the lips.

Mr. CARLIN. He had seen him, in the meantime, had he?

Mr. KASSE. I do not know whether he had or not.

Mr. CARLIN. He did not say?

Mr. KASSE. He did not say.

Mr. CARLIN. Had any sort of a trial taken place between the time you dismissed Safford and the time you had this conversation with him?

Mr. KASSE. No, sir. The trial had not taken place yet.

Mr. CARLIN. Where did you see Safford?

Mr. KASSE. He came to my place with Mr. Darling; came up for some clean clothes—clean linen.

Mr. CARLIN. Was that after you dismissed him?

Mr. KASSE. Well, I should judge, as near as I can recollect, possibly about three or four days. It might have been a little longer; I do not think it was a week.

Mr. CARLIN. Safford's name had not appeared in the papers up to that time in connection with the case, had it?

Mr. KASSE. I do not remember.

Mr. GARD. There is one thing I did not understand in your testimony. When the Slades came down to your place to see Safford, did I understand you to say that they told Safford that they had a subpoena for him?

Mr. KASSE. Yes, sir.

Mr. GARD. Are you positive that they said that, or is that just your recollection?

Mr. KASSE. If I am not mistaken, Mr. Slade pulled out the subpoena, or a card, or whatever it was, and held it so that Mr. Safford could see it, although I did not see it, but I saw it was a card, and I supposed it was a summons. Whether he served it on him or not I do not know, but Safford went with them that afternoon; they left my place about 5 o'clock in the afternoon.

Mr. GARD. Your best recollection is that Slade pulled out some sort of a card; from his pocket, was it?

Mr. KASSE. Yes. This was down in my barroom.

Mr. GARD. What?

Mr. KASSE. This was down in my barroom—in the café.

Mr. GARD. Were you attending to the barroom at that time?

Mr. KASSE. Yes, sir.

Mr. GARD. Were Mr. Safford's duties in the barroom or in the office?

Mr. KASSE. He was in front of the bar, and they were all standing there—all of the boys were having a drink before they went upstairs to their lunch.

Mr. GARD. How many drinks had they had at that time?

Mr. KASSE. I guess they had two or three rounds, as far as I can remember.

Mr. GARD. Do you remember what they had been drinking?

Mr. KASSE. Pretty much whisky and brandy. There was no beer served that I can remember.

Mr. GARD. How many drinks had Safford had standing down there at the bar?

Mr. KASSE. I do not remember.

Mr. GARD. Can you tell us about how many.

Mr. KASSE. I should judge about two; possibly three.

Mr. GARD. And the drinks that he had were drinks of either whisky or brandy, or both?

Mr. KASSE. Safford drank brandy.

Mr. GARD. You had had an acquaintance with Safford of one week before that, I believe?

Mr. KASSE. Well, that was the last day of the week.

Mr. GARD. He came there on the 15th?

Mr. KASSE. And left on the 22d.

Mr. GARD. And left on the 22d?

Mr. KASSE. Yes.

Mr. GARD. That just made seven days.

Mr. KASSE. Yes, sir.

Mr. GARD. Did you know enough about Safford to know whether he was a man who indulged in alcoholic liquors to excess in any way?

Mr. KASSE. No, sir; he did not while he was with me.

Mr. GARD. He had not been there very long.

Mr. KASSE. No. He would take, possibly, one or two drinks of brandy each day, which I would give him—very small drinks.

Mr. GARD. Do you know how many drinks of brandy he had had before this time when they were all down at the bar?

Mr. KASSE. I do not think he had any more than one in the morning.

Mr. GARD. Was he a man who took habitually a drink of brandy in the morning?

Mr. KASSE. One drink in the morning; yes, sir.

Mr. GARD. Then, down at the bar, you think, as your recollection now serves you, that he had two drinks of brandy?

Mr. KASSE. As far as I can remember.

Mr. GARD. I am just asking for your recollection. It is difficult, of course, to remember positively, I suspect.

Mr. KASSE. Yes, sir.

Mr. GARD. Tell me who paid for the liquor that was purchased down there at that time?

Mr. KASSE. I think Slade settled the whole bill; if I am not mistaken, I think it was Slade. I am not positive, but I think it was Slade that passed over the bill to me. I do not know exactly now what the denomination of the bill was.

Mr. GARD. Did he pay at the bar, or pay in the office afterwards?

Mr. KASSE. At the bar.

Mr. GARD. Did you recall about how much the expense of the treat was?—and whether the case of the liquor is made in fact?

Mr. KASSE. Yes. The amount was about a dollar a round; and we were in fact in the hotel.

Mr. GARD. Did you recall the name of the party?

Mr. KASSE. There were four in fact.

Mr. GARD. Did you recall about a dollar a round, as you expressed it, and that was the case in fact?

Mr. KASSE. Yes, sir. Remember, namely, by there is one 10 cents a round.

Mr. GARD. And it was paid for by Mr. Slade, and when you say "one round" I presume you mean Mr. Daniel Slade?

Mr. KASSE. Daniel Slade.

Mr. GARD. Was it at the bar when they were drinking together, that Mr. Slade told Safford that he had a summons or a subpoena for him?

Mr. KASSE. Yes, sir. It was fortuitous.

Mr. GARD. Do you remember whether or not he said that before or after he had any had been drunk by different persons there?

Mr. KASSE. As far as I can recollect, it was before.

Mr. GARD. You think the procedure then, was this: That before they had any drinks, Mr. Slade pulled this out, and said to Safford something to the effect: "Here is a subpoena or a summons for you to come to New York with us"?

Mr. KASSE. Yes.

Mr. GARD. Is that it—about what he said?

Mr. KASSE. That is about it.

Mr. GARD. And after that, he bought at least two drinks for Mr. Safford?

Mr. KASSE. Yes, sir.

Mr. GARD. How long did the party stay in your hotel, Mr. Kasse?

Mr. KASSE. They arrived there about 3 o'clock in the afternoon and they left at 5, as far as I can judge.

Mr. GARD. Do you remember who paid the hotel bill?

Mr. KASSE. No; I do not remember.

Mr. GARD. Did they have anything to eat in your hotel?

Mr. KASSE. Yes, sir.

Mr. GARD. Do you remember who paid for that?

Mr. KASSE. I do not remember who paid for that.

Mr. GARD. I presume they had no assignment of any room at all, did they?

Mr. KASSE. No, sir.

Mr. GARD. The money they spent was for such luncheon as they had?

Mr. KASSE. Yes, sir.

Mr. GARD. And for the bar bill?

Mr. KASSE. Yes, sir.

Mr. GARD. Or for cigars or something of that kind?

Mr. KASSE. Yes, sir.

Mr. GARD. Did you yourself see this paper that Slade said was the subpoena?

Mr. KASSE. No, sir. I saw it, yes, sir; but I did not read it.

Mr. GARD. You saw it?

Mr. KASSE. Yes.

Mr. GARD. You saw it as he pulled it from his pocket?

Mr. KASSE. Yes.

Mr. GARD. And when you say you did not see it, you mean, I presume, you did not examine it carefully?

Mr. KASSE. No; I did not examine it.

Mr. GARD. But you do remember that Slade said it was a subpoena which was to take Safford to New York with them?

Mr. KASSE. Yes, sir.

Mr. GARD. Did you have any other talk with Slade or Safford that day, except the talk down in the bar?

Mr. KASSE. I did tell him that if he could be of any personal benefit in this case, to go with Slade. Of course, I did not know who Slade was at that time.

Mr. GARD. What did Slade say, when he showed him this so-called summons, as you call it, or pulled this paper out of his pocket, at least, and showed it to him? What did he say as to who he was?

Mr. KASSE. I believe I asked him upstairs who he was. I did not know who he was downstairs at the bar, and when the lunch was being served, I asked him who he was, and he told me that he was David Slade. That happened upstairs.

Mr. GARD. That was after they had had the drinks at the bar?

Mr. KASSE. Yes.

Mr. GARD. But my question is: When he showed Safford this paper, which you call a summons, or whatever it was—anyhow, when he showed him this paper, what did he say at that time as to who he was, whether he was an officer or a lawyer, or what he was?

Mr. KASSE. I do not remember him saying anything.

Mr. GARD. You do not remember him saying anything about who he was at that time?

Mr. KASSE. No; I do not remember hearing it.

Mr. GARD. Mr. David Slade and the rest of the party stayed in the hotel until they left with Mr. Safford, did they?

Mr. KASSE. Yes; they stayed around the premises.

Mr. GARD. Do you remember about what time it was when they left?

Mr. KASSE. It was about 5 o'clock, I should judge.

Mr. GARD. Did they go home by automobile?

Mr. KASSE. Yes, sir.

Mr. GARD. Do you recall whether they purchased any other liquors when they left to go home?

Mr. KASSE. No, sir; I do not remember.

Mr. GARD. You do not remember?

Mr. KASSE. No.

Mr. GARD. You are unable to advise us whether they did or not?

Mr. KASSE. I could not tell you, sir.

Mr. GARD. And that was on the 22d?

Mr. KASSE. Yes.

Mr. GARD. When did you see Mr. Safford again after that?

Mr. KASSE. It might have been, possibly, about three or four days after that, when he came up for some clean linen.

Mr. GARD. And that was the time that you told him that you did not want him any more in the hotel?

Mr. KASSE. I told him to that effect; I spoke to that effect.

Mr. GARD. He had no further employment with you after he left on the 22d?

Mr. KASSE. No, sir.

Mr. GARD. Just a week's employment?

Mr. KASSE. Yes; that is all.

Mr. GARD. Do you remember his saying anything at that time—do you remember Safford's saying anything at that time that he could identify this Osborne, because he had beat him out of the room rent on that occasion?

Mr. KASSE. No; I never heard him speak about that.

Mr. GARD. You do not remember that.

Mr. KASSE. No, sir.

Mr. NELSON. Did you hear Mr. Slade say to Mr. Safford for what purpose he was to come to New York under the subpoena?

Mr. KASSE. Yes; it was in reference to the James W. Osborne case and Tanzer case.

Mr. NELSON. Did you hear as to what he was to testify to? Was there anything said about that?

Mr. KASSE. To identify Osborne. He said—I believe he made the remark that that night Mr. Osborne was to be at some club, and he wanted to take Safford right to that club to identify him right there.

Mr. NELSON. Did he seem to be trying to persuade Mr. Safford to do this, or were the circumstances such that they seemed to be in good faith on Mr. Slade's part? What would you say as to that?

Mr. KASSE. Yes, sir; it was put in that shape.

Mr. NELSON. What do you mean by "it was put in that shape?"

Mr. KASSE. That he would like to have Safford in New York that night, and to appear at this club, where he would take him, and identify Osborne as the man.

Mr. NELSON. Was there any persuasion used by Mr. Slade, within your knowledge, to induce Mr. Safford to go there and identify him?

Mr. KASSE. No; he just merely asked him to accompany him.

Mr. NELSON. Was there any discussion or any argument between them?

Mr. KASSE. No, sir; I heard none; not in my presence.

Mr. NELSON. Was there anything said or done within your presence that would lead you to believe that Mr. Slade was trying to induce Mr. Safford to identify J. W. Osborne as "Oliver Osborne," who was at Plainfield?

Mr. KASSE. No, sir.

Mr. NELSON. As far as you saw, or as far as you know anything about the circumstances, they were in good faith?

Mr. KASSE. Yes, sir.

Mr. NELSON. How old a man is Mr. Safford?

Mr. KASSE. Well, I should judge him to be at least 60 years of age.

Mr. NELSON. Did he come to you recommended, or how did you come to engage him?

Mr. KASSE. He called on my wife in Paterson, previous to the 15th of March, asking her if I would employ him, and my wife told Mr. Safford that the best thing that he could do would be to come up and see me personally, and on a Monday morning, on the 15th of March, he came up, bag and baggage, and, of course, naturally, he was there, and I really did not want the man, but he was there with his full kit, and I told him to go ahead.

Mr. NELSON. What did you pay him? A monthly salary?

Mr. KASSE. Yes, sir.

Mr. NELSON. How much?

Mr. KASSE. \$20 and board.

Mr. NELSON. \$20 and board?

Mr. KASSE. Yes.

Mr. NELSON. What was his work?

Mr. KASSE. General utility, around the grounds, or anything I wanted him to do.

Mr. NELSON. He did not come there recommended at all?

Mr. KASSE. No, sir.

Mr. NELSON. Had you known anything of him previously?

Mr. KASSE. Never saw the man or heard of him in my life before.

Mr. NELSON. What impression did you get of his character?

Mr. KASSE. As far as Safford himself was concerned, I thought he was real nice.

Mr. NELSON. What do you mean by as far as Safford himself was concerned, you thought he was real nice?

Mr. KASSE. Well, he conducted himself in a gentlemanly way and did his work.

Mr. NELSON. You mean the notoriety he got afterwards; is that what you have reference to?

Mr. KASSE. I did not like that. Of course, I knew nothing about this at the time he came with me.

Mr. NELSON. That is, you learned since that he was indicted for some offense?

Mr. KASSE. Yes.

Mr. NELSON. That is what you have in mind?

Mr. KASSE. Yes, sir.

Mr. NELSON. But up to that time, you knew nothing in regard to his character, or to warrant you in having any dislike for him or fear of him?

Mr. KASSE. No, sir; none whatever.

Mr. NELSON. Do you think that Mr. Safford had imbibed so many drinks that he was intoxicated in any way when he conversed with the Slades?

Mr. KASSE. No, sir; he was never intoxicated in my place.

Mr. NELSON. Did you ever see him intoxicated?

Mr. KASSE. No, sir.

Mr. NELSON. Slightly intoxicated?

Mr. KASSE. Yes, sir; I must say I did.

Mr. NELSON. Before or after this?

Mr. KASSE. After; the time he came up for the clean linen.

Mr. NELSON. And then he was a little bit under the influence of liquor?

Mr. KASSE. I think he must have put a few more across than he could stand.

Mr. NELSON. Before he arrived at your place?

Mr. KASSE. Yes, sir.

Mr. NELSON. He had some drinks afterwards? I think you testified that he had some drinks then, did you not?

Mr. KASSE. He had one drink when he came up for his linen.

Mr. NELSON. At your place?

Mr. KASSE. Yes, sir; always brandy. I think he took a soft drink that day.

Mr. NELSON. And he was intoxicated slightly?

Mr. KASSE. He was, when he came.

Mr. NELSON. And he took a soft drink afterwards?

Mr. KASSE. When he landed at my place, he took a soft drink. He had a little bit too much aboard when he arrived at my place.

Mr. NELSON. Did you tell him so?

Mr. KASSE. Certainly.

Mr. NELSON. You told him he had too much aboard?

Mr. KASSE. Certainly.

Mr. NELSON. And it was as a result of that that he took a soft drink; is that it?

Mr. KASSE. Yes, sir. He did not stay there long that time; it was a very short time. He came up in a machine, he and a Mr. Darling.

Mr. NELSON. Was Mr. Darling intoxicated, too, slightly?

Mr. KASSE. No, sir.

Mr. NELSON. Was he perfectly sober?

Mr. KASSE. I did not notice anything on him.

Mr. NELSON. That is all.

TESTIMONY OF MR. ALBERT J. McCULLAGH.

(The witness was duly sworn by Mr. Russell, the clerk of the sub-committee.)

Mr. CARLIN. Just give your name, place of residence and business, and occupation.

Mr. McCULLAGH. 170 West Seventy-eighth Street; that is my residence, and my occupation, investigator for John J. Hannan, 45 West Thirty-fourth Street, New York City.

Mr. GARD. You have given to the stenographer your name and address, and your business or occupation, have you not?

Mr. McCULLAGH. Yes.

Mr. GARD. Your name is Albert J. McCullagh?

Mr. McCULLAGH. Albert J. McCullagh.

Mr. GARD. I understand that you are one of the defendants indicted, together with David Slade and Rae Tanzer and others, charged with conspiracy to obstruct justice?

Mr. McCULLAGH. Yes, sir.

Mr. GARD. In the United States court?

Mr. McCULLAGH. Yes, sir.

Mr. GARD. The committee, realizing that you are one of these persons charged with crime under an indictment, would say to you very frankly that if there is any question that is asked which you do not desire to answer, on account of your connection with this criminal case, we will not insist upon your answering it.

Mr. McCULLAGH. I will answer every—

Mr. GARD (interposing). We do not want you to say anything to incriminate yourself, and while we feel that you are perhaps fully advised of your rights, in the event that you may not be, we desire that you be thoroughly informed of your rights. Were you on a trip with Slade and others to Greenwood Lake, N. J., when you saw a man by the name of Frank D. Safford?

Mr. McCULLAGH. Yes; that is the first time I saw him.

Mr. GARD. How did you happen to be in the party?

Mr. McCULLAGH. How did I happen to be in the car?

Mr. GARD. In the party?

Mr. McCULLAGH. I had started to work on the case; I made the first investigations in the case.

Mr. GARD. Who requested you to investigate the case?

Mr. McCULLAGH. Mr. Hannan assigned me to do it.

Mr. GARD. Were you employed by Mr. Hannan?

Mr. McCULLAGH. I was employed by Mr. Hannan.

Mr. GARD. Are you still employed by him?

Mr. McCULLAGH. Yes.

Mr. GARD. What is the name of Mr. Hannan's agency?

Mr. McCULLAGH. The Hannan Detective Agency.

Mr. GARD. And you are one of the detectives or investigators employed by him?

Mr. McCULLAGH. Yes; I am an investigator for him.

Mr. GARD. And in 1914 and 1915 you had the same employment, did you?

Mr. McCULLAGH. Yes.

Mr. GARD. And Mr. Hannan assigned you to work on this case?

Mr. McCULLAGH. Yes; Mr. Hannan assigned me to it himself.

Mr. GARD. Who was the first man you went to see?

Mr. McCULLAGH. The first man I went to see was Mr. Kitchen, the proprietor of the Kensington Hotel in Plainfield.

Mr. GARD. Did you go to see Mr. Kitchen before you went to see Slade?

Mr. McCULLAGH. Yes, sir.

Mr. GARD. You went to see Kitchen immediately after Mr. Hannan told you to investigate this case?

Mr. McCULLAGH. Mr. Hannan came up to me and gave me my notes—the notes that he got about the case and handed them to me and explained the case to me briefly and told me to go out and investigate it as quickly as I could. I had some other work to attend to before going out there, and I think I left on the afternoon train around 4 or 5 o'clock. It was dusk shortly after I got there. I know when I got to the hotel Mr. Kitchen was in the dining room having dinner.

Mr. GARD. That is the hotel at Plainfield?

Mr. McCULLAGH. The hotel at Plainfield.

Mr. GARD. What was the name of that hotel?

Mr. McCULLAGH. The Kensington Hotel. It was given to me as the "Kensington Inn" at first.

Mr. GARD. Coming back to my original question, about your being in the party, when you went with Slade and others to Greenwood Lake, N. J., do you remember who were in the party?

Mr. McCULLAGH. Yes; there was a Mr. Berman, Mr. David Slade, and I can not think of his name just now—a friend of Mr. Safford's—this friend that came to Mr. Slade's office and offered to find out where Safford was, and myself.

Mr. GARD. And what time did you leave New York in this party?

Mr. McCULLAGH. Left around noon.

Mr. GARD. In an automobile?

Mr. McCULLAGH. In an automobile.

Mr. GARD. And what time did you get to Greenwood Lake, N. J.?

Mr. McCULLAGH. We had no intentions of going to Greenwood Lake.

Mr. GARD. I did not ask you about your intention.

Mr. McCULLAGH. We went to Paterson, first. I do not know what time we got to Greenwood Lake.

Mr. GARD. What time did you get to Paterson?

Mr. McCULLAGH. Some time around 2 o'clock, I think it was.

Mr. GARD. Did it take you two hours to go from New York to Paterson?

Mr. McCULLAGH. Maybe it was 2 when we left Paterson. It was somewhere around there, I think.

Mr. GARD. When you got to Greenwood Lake, let me ask you this: Do you remember when you saw Mr. Safford, or Slade producing a paper which he said was a summons or subpoena, calling Safford to New York?

Mr. McCULLAGH. No; I can not say that, because I was not in the room at that time. I was not with Mr. Slade all the time he was with Safford. I came down stairs.

Mr. GARD. You recall the time you were in the barroom? Do you remember the time you were in the barroom at Mr. Kasse's hotel?

Mr. McCULLAGH. Yes; I was in there twice.

Mr. GARD. You were in there twice?

Mr. McCULLAGH. Yes; it is right adjoining the foot of the stairs there.

Mr. GARD. I do not know where it is. I am just asking you about the circumstance. It is a fact, is it not, that you and your party were in the bar with Mr. Safford?

Mr. McCULLAGH. Yes.

Mr. GARD. And Mr. Kasse was the bartender?

Mr. McCULLAGH. He was tending bar, and Mr. Slade came in with Mr. Safford.

Mr. GARD. Slade brought Mr. Safford in?

Mr. McCULLAGH. Yes.

Mr. GARD. For our information—not in any offensive sense, but purely for our information—tell us how many drinks you had that day.

Mr. McCULLAGH. I think I had about four from about 12 o'clock noon until about 10 that night.

Mr. GARD. Did you have any liquor in the machine?

Mr. McCULLAGH. No.

Mr. GARD. Going down?

Mr. McCULLAGH. No.

Mr. GARD. I presume you took a drink in Paterson?

Mr. McCULLAGH. No; I did not.

Mr. GARD. No?

Mr. McCULLAGH. No.

Mr. GARD. Did you take any drinks in this hotel of Mr. Kasse's at Greenwood Lake?

Mr. McCULLAGH. Yes; I had two there.

Mr. GARD. Two?

Mr. McCULLAGH. Yes.

Mr. GARD. Do you remember what Mr. Safford drank?

Mr. McCULLAGH. No; I do not.

Mr. GARD. Do you remember what you drank?

Mr. McCULLAGH. Yes.

Mr. GARD. What?

Mr. McCULLAGH. Whisky.

Mr. GARD. It is in evidence, I am very frank to tell you, that Mr. Kasse said that Mr. Safford was drinking brandy, and that he drank at least two drinks on that occasion, and had one drink in the morning before. Would that refresh your recollection as to what Mr. Safford drank?

Mr. McCULLAGH. No; it would not, because I was away the other end from the whole party.

Mr. GARD. How many were in the party?

Mr. McCULLAGH. Just as I say, this Mr. Slade and this friend of Mr. Safford's.

Mr. HILL. Mr. Darling?

Mr. McCULLAGH. Yes; Mr. Darling. That is it.

Mr. GARD. Were there as many as 10 in the party?

Mr. McCULLAGH. No; there was not.

Mr. GARD. Who paid for the drinks you had in the barroom?

Mr. McCULLAGH. Mr. Berman, I think.

Mr. GARD. Mr. Berman?

Mr. McCULLAGH. I think it was Mr. Berman. I know Mr. Slade did not have any money leaving New York; he left shorthanded. Whether he borrowed some money from Mr. Berman or not, I do not remember.

Mr. CARLIN. The committee will take a recess now until 2 o'clock.

(Whereupon, at 12.10 o'clock p. m., the subcommittee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reconvened at 2 o'clock p. m., there being present Messrs. Carlin, Gard, and Nelson.

TESTIMONY OF MR. ALFRED J. McCULLAGH—Continued.

Mr. GARD. Mr. McCullagh, when we took a recess on account of a call of the House of Representatives, to which we had to respond, I was asking you some questions, as you may remember, concerning the time you were at Greenwood Lake with Mr. Slade and the party of two other persons—the party of four including yourself. We were at that part of your testimony in which you disclosed that you were with Slade and with Safford in the barroom. I do not know whether you said or not how many drinks Mr. Safford took.

Mr. McCULLAGH. No; I did not say.

Mr. GARD. Can you say now?

Mr. McCULLAGH. No; I can not.

Mr. GARD. You say you drank whisky. Do you know what he drank?

Mr. McCULLAGH. No; I do not. I was just trying to refresh my memory on that. There was Mr. Safford on this end of the bar [indicating] and then came Mr. Darling and Mr. Slade. They kind of grouped in a slight circle. Then I think the chauffeur—whether he was there or not, I am not sure; I don't remember about that. Then Mr. Burman stood and then I came in. There was a bootblack

stand or barber chair there—I don't remember which it was—down near the end of the bar.

Mr. GARD. Was it you that had a conversation with Mr. Safford or was it Slade?

Mr. McCULLAGH. Mr. Slade—and the only thing I did—what I did was I had the photographs in my pocket—

Mr. GARD. What photographs?

Mr. McCULLAGH. The photograph of James W. Osborne, and one of Rae Tanzer, or two of Rae Tanzer.

Mr. GARD. Let me stop there long enough to inquire where you got those photographs?

Mr. McCULLAGH. I bought one of Pach Bros. in New York City.

Mr. GARD. Which one?

Mr. McCULLAGH. Mr. Osborne's.

Mr. GARD. How many photographs of him did you have?

Mr. McCULLAGH. I only had one, but Mr. Slade had a duplicate of it, but his was small, a small oval picture, and mine was a big cabinet photo.

Mr. GARD. You bought it of a firm of photographers in New York?

Mr. McCULLAGH. Yes. You can go there and buy a photograph of any prominent man, any man in public life—anybody.

Mr. GARD. Where did you get the photograph of Miss Tanzer?

Mr. McCULLAGH. Mr. Hannan gave me that.

Mr. GARD. Your employer?

Mr. McCULLAGH. Yes; but he got it from Mr. Slade, I believe. The idea in giving me those photographs was for me to take them with me and go to see Mr. Kitchin, to go to him and the hotel owner, and see if they could identify this man and woman as the two people that stopped at that time at the hotel.

Mr. GARD. Had you previously had the photographs at the Kensington Inn before this time?

Mr. McCULLAGH. Oh, yes; I had been out to Kensington Inn before I went to Greenwood Lake.

Mr. GARD. Had you had the photographs out there?

Mr. McCULLAGH. Certainly. I showed them to Mr. Kitchin.

Mr. GARD. Why was it you had the photographs there at Greenwood Lake?

Mr. McCULLAGH. I showed them to Mr. Kitchin, and Mr. Kitchin identified the man, but could not identify the woman. It was after that that we got hold of Safford, and I was to take them up and show them to him and see if he could identify them.

Mr. GARD. As a matter of fact, Mr. Kitchin had, at some trial, failed to identify Mr. Osborne?

Mr. McCULLAGH. I still say Mr. Kitchin identified that photograph when I showed it to him, before I told him who this party was. I asked him, I says, "Do you know who this party is? Did you ever see this party before?" He looked at it a while, and he says, "That face is familiar." I says, "Does he resemble a man that came here one time?" He looked at it and he says, "Yes; that is the man that came to this hotel and left without paying his bill." That is what he told me.

Mr. GARD. Mr. Kitchin said that?

Mr. McCULLAGH. Yes. I asked, would he give me an affidavit. No; he wouldn't.

Mr. GARD. Do you remember afterwards, when his attention was called to Mr. Osborne in New York, whether he did or did not identify him?

Mr. McCULLAGH. I don't know. I wasn't in the trial room any time Mr. Kitchin was on the witness stand.

Mr. GARD. You said he identified the picture as the man who was there—

Mr. McCULLAGH (interrupting). I want to withdraw that. He did testify that was not the man, at my trial, I think.

Mr. CARLIN. Were you on trial?

Mr. McCULLAGH. I was on trial, but it was declared a mistrial. Judge Russell took sick.

Mr. GARD. They proceeded with part of it, and then stopped?

Mr. McCULLAGH. Yes.

Mr. GARD. Did you also hear Mr. Safford say he could identify the man by this same photograph, for this same reason—I mean that he had not paid his board bill?

Mr. McCULLAGH. No. I can tell you just what Mr. Safford said.

Mr. GARD. Did he say that?

Mr. McCULLAGH. Yes; he said—what he did say, Safford says, "Yes; I could identify this man, but I want to see him in person." He said, "I wouldn't care to identify him from a photograph," but, he says, "I remember that man made me pretty sore by leaving that hotel without paying his bill, and leaving me in a bad light, because I told Mr. Kitchin that he was—that they looked like good people."

Mr. GARD. That is what Mr. Safford told you at that time, that he could identify him because he left without paying his bill, and that made him sore, and put him in a bad light?

Mr. McCULLAGH. The discrepancy between the difference in their heights, the woman being so small and he being such a big fellow. When I showed him the photograph he said to me, "That looks like the man; that looks like that chin of his, and that big neck."

Mr. GARD. After you left the bar, when did you have any conversation with Mr. Safford again?

Mr. McCULLAGH. It was two days afterwards, I think.

Mr. GARD. After you left the bar of the Greenwood Lake Hotel?

Mr. McCULLAGH. We hadn't any talk going down in the car at all. In fact, it was raining—

Mr. GARD (interposing). Did you have any talk with him in the hotel, at any place other than at the bar?

Mr. McCULLAGH. Yes; before we came down to the bar. I produced the photograph and asked, "Was that the man?" and he said, "I have got to see that man in person before I could identify him." Anybody looking at the photograph I had would say the same thing, because it was taken 12 years before that time.

Mr. GARD. When you left the barroom, where did you go?

Mr. McCULLAGH. We went out and got into the automobile.

Mr. GARD. How long were you in the barroom, then?

Mr. McCULLAGH. We were in there the first time about five minutes—probably the same time after Mr. Safford had got dressed and came down, when we were in there five minutes more.

Mr. GARD. Do you remember what time you left the Greenwood Lake Hotel?

Mr. McCULLAGH. No; I don't. I couldn't say, at all. I think it was around, probably, between half past 4 and maybe 6; somewhere around there; I don't remember.

Mr. GARD. What time did you get to Paterson?

Mr. McCULLAGH. In the afternoon.

Mr. GARD. Coming back?

Mr. McCULLAGH. We didn't stop at Paterson coming back.

Mr. GARD. You did not go through Paterson?

Mr. McCULLAGH. No; we came around and came back through Tuxedo Park and through Englewood.

Mr. GARD. What time did you get to New York?

Mr. McCULLAGH. About 12 o'clock. We had two or three blow-outs on the way down and we had to stop and buy a tire, and lay up at the fire house there at one time and get them to bring out the air pressure and pump up the tires, and put a new tire on one place.

Mr. GARD. On that occasion did Mr. Slade have a subpoena for Mr. Safford?

Mr. McCULLAGH. I could not answer that question at all.

Mr. GARD. Did he say he had a subpoena for Safford to appear before the commissioner?

Mr. McCULLAGH. He didn't say anything. I was instructed by him—he said "Jump into the car and come along."

Mr. GARD. I mean when you were down there in the barroom?

Mr. McCULLAGH. No, sir; I don't know. I didn't see any paper, and I don't know whether he had a paper or not. I heard afterwards he did.

Mr. GARD. Do you remember that he pulled a paper out of his pocket and said, "This is a subpoena," or summons, or process of some kind, "to take you to New York as a witness?"

Mr. McCULLAGH. No; I can't remember that. These other fellows were between us, and I couldn't hear the conversation. Mr. Safford was at one end, and I was at the other. In fact, he acted so cranky when we went up there I didn't care to stand around.

Mr. GARD. What is that?

Mr. McCULLAGH. I say he acted so cranky.

Mr. GARD. Who?

Mr. McCULLAGH. Mr. Safford did.

Mr. GARD. What do you mean by that?

Mr. McCULLAGH. He turned around and said he didn't want to come down to New York; he was up there enjoying himself and shaping up the hotel and getting ready to open up, and he didn't care about coming down.

Mr. GARD. Were you brought before the grand jury at any time?

Mr. McCULLAGH. No, sir. I offered to testify before them. I sent Mr. Hannan—

Mr. GARD (interposing). Did you testify before the commissioner?

Mr. McCULLAGH. I did.

Mr. GARD. Commissioner Houghton?

Mr. McCULLAGH. Yes.

Mr. GARD. In what connection was your testimony?

Mr. McCULLAGH. It was the preliminary hearing, I think, given to Miss Tanzer, before he decided to hold her.

Mr. GARD. Do you remember when that hearing was had?

Mr. McCULLAGH. No; I did not. It was after March the 10th—I think the 22d or 23d.

Mr. GARD. Were you a defendant in the proceedings at that time?

Mr. McCULLAGH. No; I was not.

Mr. GARD. Were you brought before the grand jury at any time?

Mr. McCULLAGH. No, sir; I offered to testify before them. It was as the result of that hearing, I believe, I was indicted.

Mr. GARD. It was because of a conspiracy to obstruct justice that you were indicted?

Mr. McCULLAGH. I believe so.

Mr. GARD. When were you indicted?

Mr. McCULLAGH. I don't know.

Mr. GARD. You do not know the date of the indictment?

Mr. McCULLAGH. I have no idea at all.

Mr. GARD. You saw the indictment. It was served on you, was it not, or a copy of the indictment?

Mr. McCULLAGH. I never had a paper served on me by the United States court.

Mr. GARD. You went to trial on a charge of conspiracy?

Mr. McCULLAGH. I was brought up before the judge, but I was notified then what I was on trial for; that is all there was to it.

Mr. GARD. You never had any papers served on you?

Mr. McCULLAGH. No, sir.

Mr. GARD. Is Mr. Littleton your attorney?

Mr. McCULLAGH. Yes; I believe so. The only paper I saw—

Mr. GARD (interposing). You "believe so." You certainly would know who was your lawyer?

Mr. McCULLAGH. Mr. Littleton and Mr. Benjamin Slade. Mr. Littleton, I guess, was the man in charge.

Mr. GARD. Why is it you have what seems to be a poor memory about who was your attorney?

Mr. McCULLAGH. Mr. Littleton appeared for us, but I supposed Mr. Benjamin Slade was to be the attorney. The morning of the trial they told me Mr. Littleton was going to take charge of it.

Mr. GARD. Had you been arrested before that?

Mr. McCULLAGH. Oh, yes; I went down and surrendered myself to the marshal. I heard there was a warrant out for me.

Mr. GARD. Were you at any time in prison?

Mr. McCULLAGH. No. I was confined in the marshal's room until I got bondsmen.

Mr. GARD. What bond did they put you under?

Mr. McCULLAGH. \$5,000.

Mr. GARD. You gave bond and were released?

Mr. McCULLAGH. I was released.

Mr. GARD. Who went on your bond?

Mr. McCULLAGH. A friend of a friend of mine—I don't know her name. She owns some real estate up on Broadway.

Mr. GARD. A friend of a friend of yours?

Mr. McCULLAGH. Yes. Mr. Weiler, I believe it was; I am not sure.

Mr. GARD. When the case came on for trial, Mr. Benjamin Slade appeared first as your attorney, and subsequently Mr. Littleton was in the case?

Mr. McCULLAGH. I guess that is about the way it was.

Mr. GARD. That is all I care to ask.

Mr. NELSON. How many went out to this place to see Mr. Safford?

Mr. McCULLAGH. Berman, Slade, Darling, and myself.

Mr. NELSON. Three of you?

Mr. McCULLAGH. Four of us.

Mr. NELSON. What was the occasion for so many going out?

Mr. McCULLAGH. I don't know why Mr. Berman came along at all. I sat with the chauffeur all the way. There was three in the car coming back—that is, coming back, there was three also in the front and three in the back. There was three going up in the back, too, and I sat with the chauffeur.

Mr. NELSON. Were the others in the automobile before you entered it?

Mr. McCULLAGH. Yes; I was up in my office, and I telephoned down. I came back to the office, to Mr. Hannan's office—that is, I came down to the office, rather, and the phone was ringing and Mr. Hannan was on the wire, and he said, "I am down at Slade's office; come down here." And I said, "All right," and I went down; and Mr. Darling was there in the office. Mr. Hannan introduced me to Mr. Darling, and he said, "I think Mr. Darling is going to get Safford for us."

Mr. NELSON. Mr. Darling was going to locate Safford?

Mr. McCULLAGH. Yes.

Mr. NELSON. That is why he was along?

Mr. McCULLAGH. Yes.

Mr. CARLIN. You say Darling was going to get Safford for you?

Mr. McCULLAGH. That is what Mr. Hannan said.

Mr. NELSON. He was a friend of Mr. Safford?

Mr. McCULLAGH. I believe so. Mr. Safford wrote him a day or two before that.

Mr. NELSON. Why was Mr. Burman along?

Mr. McCULLAGH. He was a friend of Mr. Slade's. I don't know what he came along for. I didn't ask Mr. Slade. In fact, probably I didn't speak a dozen or two dozen words in the whole trip.

Mr. NELSON. You were together in the automobile?

Mr. McCULLAGH. Yes; but I was sitting in front with the chauffeur, the colored chauffeur he had.

Mr. NELSON. The whole purpose of the trip was to——

Mr. McCULLAGH (interrupting). To get this missing witness, Safford.

Mr. NELSON. For the purpose of identifying——

Mr. McCULLAGH (interrupting). To see if he could identify this man, because this man Kitchin had gone back on his testimony after he found out who it was.

Mr. NELSON. Did you hear Mr. Kitchin testify?

Mr. McCULLAGH. I did; yes. The last time. I corrected myself on that, you know. It was during my trial. I didn't hear him testify during Safford's trial.

Mr. NELSON. The testimony of Mr. Kitchin was printed?

Mr. McCULLAGH. I believe so.

Mr. NELSON. From your trial?

Mr. McCULLAGH. Yes.

Mr. NELSON. Had you met Mr. Slade before you were instructed by Mr. Hannan, your chief, to investigate this?

Mr. McCULLAGH. Had I ever met him before?

Mr. NELSON. Yes.

Mr. McCULLAGH. Yes; I met him one afternoon. I saw him about 10 minutes on another case.

Mr. NELSON. How long before this event?

Mr. McCULLAGH. Probably a month or two before that?

Mr. NELSON. A month or two?

Mr. McCULLAGH. Probably that; yes. It was on another matter altogether.

Mr. NELSON. Is that the only time you met him before that?

Mr. McCULLAGH. That is the only time I ever met him. I had heard about him in the office. Hannan had done work for him before, but I had never worked on any operation from that office.

Mr. NELSON. You had no talk with Slade before you went to Plainfield?

Mr. McCULLAGH. No talk at all. Mr. Hannan brought me in and introduced me to Darling and a couple of minutes after that Slade came in, and he said, "Now we will start." We went down and got in the automobile and the boss said to me, "Mac, sit in front."

Mr. NELSON. How many times have you seen Mr. Safford?

Mr. McCULLAGH. Since then?

Mr. NELSON. That is the first time you met him, then?

Mr. McCULLAGH. The first time I met him was at Greenwood Lake.

Mr. NELSON. How many times since then have you met him?

Mr. McCULLAGH. I don't know; I couldn't say. I was with him quite some time after that, and I have seen him occasionally even this last winter, or late fall, rather. I saw him once, I think, since my trial.

Mr. NELSON. How many times have you seen him intoxicated?

Mr. McCULLAGH. I couldn't say I ever saw him intoxicated. I saw him sick from drink one night, the night after the hearing when this detective tried to work himself in with us. He wanted to follow us to find out where Safford was sleeping that night.

Mr. NELSON. Who was the detective?

Mr. McCULLAGH. A man by the name of Finn.

Mr. NELSON. Do you know where he was employed?

Mr. McCULLAGH. McLellan's Detective Agency, on West Twenty-first Street.

Mr. NELSON. Do you know who instructed him to follow you gentlemen?

Mr. McCULLAGH. I believe he was instructed by Mr. McLellan.

Mr. NELSON. Who is he?

Mr. McCULLAGH. That is his boss.

Mr. NELSON. You do not know anything about who engaged him?

Mr. McCULLAGH. No; I don't know that.

Mr. NELSON. Did you have a talk with him?

Mr. McCULLAGH. Yes; he came up with us that night.

Mr. NELSON. What did he say was his purpose?

Mr. McCULLAGH. He said, "I have been instructed to find out where you are sleeping, and," he said, "I am going to find out."

Mr. NELSON. Where you were sleeping?

Mr. McCULLAGH. Where Safford was sleeping. I told him, "There is no use; you can't do that. We will get away from you." I said,

"I don't know what you want to do that for. The man has already testified." He said, "That is my orders, and that is what I am going to do." He said, "Come along."

Mr. NELSON. What objection could there be to him knowing that?

Mr. McCULLAGH. I don't know. The man was afraid. He is not used to New York and didn't know what that fellow would do. They were bobbing around that corridor there. My God, you would think there was a war on. I think six or eight followed me out across the street after Safford had testified.

Mr. NELSON. Did you testify in your own case?

Mr. McCULLAGH. No; I did not.

Mr. NELSON. Did you testify in any hearing?

Mr. McCULLAGH. Oh, yes; I testified after the hearing, and I testified at Safford's trial.

Mr. NELSON. Did you tell all these facts in the hearing?

Mr. McCULLAGH. I did in a general way. You may have gone into it a little more than they did.

Mr. NELSON. Is there anything you know of with reference to use by Mr. Marshall of his power as district attorney to oppress citizens that you have not told to this committee?

Mr. McCULLAGH. No; I can not say that I do.

Mr. NELSON. You do not know of any other fact?

Mr. McCULLAGH. Outside of the fact that one of his assistants came to me and told me to come down to Mr. Marshall's office and talk it over with him.

Mr. NELSON. Who was this?

Mr. McCULLAGH. Mr. Conten.

Mr. NELSON. What did you say?

Mr. McCULLAGH. I told him when I got on the witness stand I would talk, and not before.

Mr. NELSON. What was his purpose? What did he want to talk over?

Mr. McCULLAGH. That is all he said to me.

Mr. NELSON. You did not go?

Mr. McCULLAGH. Certainly not.

Mr. NELSON. Did he threaten to imprison you if you did not go?

Mr. McCULLAGH. No.

Mr. NELSON. He simply suggested you go down?

Mr. McCULLAGH. Yes; and another day during the trial Mr. McLellan's brother—Neill McLellan, I believe his name is—turned around and said, "Mac, you better get under cover."

Mr. NELSON. What did you understand him to mean?

Mr. McCULLAGH. He was lined up on the other side of the case, and they were all telling me I was in bad and "You can't buck this man."

Mr. NELSON. What man?

Mr. McCULLAGH. Mr. Osborne. They said, "He has too many friends back of him."

Mr. CARLIN. Who told you that?

Mr. McCULLAGH. This Neill McLellan. Mr. Weinhaus, that I heard you call out his name to-day, heard it. He was sitting alongside of me. This was during my trial.

Mr. NELSON. He heard him say that?

Mr. McCULLAGH. Yes.

Mr. NELSON. He is a clerk in Mr. Slade's office?

Mr. McCULLAGH. Yes.

Mr. NELSON. What were you indicted for?

Mr. McCULLAGH. Conspiring to—I don't know really what it was. I didn't bother much about it.

Mr. NELSON. What acts in your case were testified to?

Mr. McCULLAGH. They claimed I brought Mr. Safford in and pointed out Mr. Osborne to him.

Mr. NELSON. That you caused him to identify him?

Mr. McCULLAGH. Yes.

Mr. NELSON. What else did they charge against you?

Mr. McCULLAGH. I don't know. I never bothered listening to the indictment at all. It may seem funny to you, but it is true.

Mr. CARLIN. You say when Mr. Hannan gave you your instructions with these photographs, Mr. Darling was present?

Mr. McCULLAGH. I didn't say that.

Mr. CARLIN. When did you first see Mr. Darling?

Mr. McCULLAGH. I saw Mr. Darling the day we went to Greenwood Lake, about noon.

Mr. CARLIN. Whom did you understand Mr. Darling to be? What was his connection with the matter?

Mr. McCULLAGH. A friend of Safford. I understood that he had gone to the morning World—the papers were all wondering where the hotel clerk was. There was some articles printed about the hotel clerk being missing, and Mr. Darling wanted to sell the information to a paper. I suppose he thought he was going to get a fortune for it, and they only offered him \$5. Then he came down to Slade's office, and he told Mr. Slade—whatever happened between them I don't know, but I heard afterwards was that this man came into his office—he told me himself he was there, and one of the reporters also told me—that he was down to the World office. That is all I know about Darling—that he used to be with Safford.

Mr. CARLIN. He told you he was a friend of Safford?

Mr. McCULLAGH. Yes.

Mr. CARLIN. Was he an intimate friend or just an acquaintance?

Mr. McCULLAGH. He told me he was an intimate friend, and Safford told me afterwards that he was only a man he had befriended.

Mr. CARLIN. That he had befriended Darling?

Mr. McCULLAGH. Yes; that Darling came to Plainfield broke and Safford stood responsible for him for his room and his meals at the Kensington Hotel until he got a job.

Mr. GARD. I do not know that I recall that it was stated, but what is Darling's occupation?

Mr. McCULLAGH. I think he is a bum—pardon me, but I do. He has been a freight jumper all his life and hangs around circuses doing odd jobs—a razorback.

Mr. CARLIN. He has been a freight jumper?

Mr. McCULLAGH. Yes.

Mr. GARD. You mean a tramp?

Mr. McCULLAGH. Yes; working fairs and circuses and one thing and another.

Mr. GARD. Do you know where he is now?

Mr. McCULLAGH. No; Mr. Marshall ought to know, though.

Mr. CARLIN. Why should he know?

Mr. McCULLAGH. I believe there is some agreement between Mr. Marshall and him to keep in touch with one another. In fact, Darling informed me it was so.

Mr. CARLIN. Was Darling a witness against you?

Mr. McCULLAGH. No; I don't think so. I don't know that.

Mr. CARLIN. Did he testify in your case?

Mr. McCULLAGH. No; he did not.

Mr. CARLIN. Did Darling tell you there was an agreement between himself and Mr. Marshall?

Mr. McCULLAGH. Yes; that he was to keep Mr. Marshall informed as to his whereabouts.

Mr. CARLIN. Was he indicted?

Mr. McCULLAGH. No; but they locked him up as a witness and kept him in the Tombs for about two weeks.

Mr. NELSON. As a witness?

Mr. McCULLAGH. Yes; brought him on from somewhere out in Pennsylvania.

Mr. CARLIN. Have you seen him since he was released?

Mr. McCULLAGH. No; I have not. I don't want to see him. Every time you see him he wants to borrow money off of you.

Mr. CARLIN. He must have mistaken you for a banker?

Mr. McCULLAGH. I guess so; he did make a mistake.

Mr. CARLIN. What did he say about an agreement between himself and Mr. Marshall?

Mr. McCULLAGH. He said Mr. Marshall had released him provided he promised to keep in touch with him, so he offered to keep in touch with him. I never heard whether he was paid any money or anything. I don't know what the agreement was between them. In fact, I didn't bother talking with him, outside of that.

Mr. CARLIN. Your connection with this case came regularly to you through your superior?

Mr. McCULLAGH. Yes.

Mr. CARLIN. In the detective agency?

Mr. McCULLAGH. Mr. Hannan called me in and handed the case to me.

Mr. CARLIN. And you proceeded as you usually do, according to instructions?

Mr. McCULLAGH. I went out according to instructions. I think I have the original instructions home in New York, and if you want them I will mail them on to you.

Mr. CARLIN. As the result of your labors you were indicted?

Mr. McCULLAGH. Yes.

Mr. CARLIN. You have been tried and there was a hung jury?

Mr. McCULLAGH. A mistrial.

Mr. CARLIN. I believe that was because the judge was taken sick?

Mr. McCULLAGH. Yes; Judge Russell was taken sick.

Mr. HILL. May I ask a question?

Mr. CARLIN. What is it?

Mr. HILL. I only want to ask one question, though it may bring out two or three questions.

Mr. CARLIN. Along what line?

Mr. HILL. Along the line of his investigation.

Mr. CARLIN. Very well; go ahead.

Mr. HILL. In your investigation you went out to Plainfield, N. J., did you not?

Mr. McCULLAGH. Yes.

Mr. HILL. You called on Mr. Kitchin?

Mr. McCULLAGH. Yes.

Mr. HILL. Who was Mr. Kitchin?

Mr. McCULLAGH. He was proprietor of the hotel there.

Mr. HILL. Did Mr. Kitchin look at the photograph of James W. Osborne?

Mr. McCULLAGH. Yes; he did.

Mr. HILL. What did he say about that photograph, as compared with the man who had stopped and registered there with this girl?

Mr. McCULLAGH. He said that was the man.

Mr. HILL. "That was the man?"

Mr. McCULLAGH. That was the man; yes.

Mr. HILL. Did he afterwards change his testimony on the trial?

Mr. McCULLAGH. He did; yes.

Mr. HILL. That was his first statement to you?

Mr. McCULLAGH. Yes; he changed his testimony after he heard that the original of that photograph was James W. Osborne. That is the time he changed his testimony.

Mr. HILL. The lawyer in New York?

Mr. McCULLAGH. Yes.

Mr. HILL. What has become of that fellow since that time?

Mr. McCULLAGH. Who?

Mr. HILL. Mr. Kitchin.

Mr. McCULLAGH. I don't know. I have no idea. Somebody told me he sold the hotel. I don't know where he is at all. I have never been down there since.

Mr. HILL. Did he finally appear before the grand jury down in New York?

Mr. McCULLAGH. Yes; I believe he was there all the time. Some of the Government men went out to see him—I think Swayne, the post-office inspector, went out there, and I believe he spent most of the time from then on in New York.

Mr. HILL. In connection with Mr. Marshall's office?

Mr. McCULLAGH. Certainly in and out of the office.

Mr. HILL. It was after he got in there that he changed his story from what he originally told you?

Mr. McCULLAGH. I can't say that.

Mr. HILL. It was after that that he testified differently from what he told you when you were out on that investigation?

Mr. McCULLAGH. Yes.

Mr. HILL. When you were on this investigation, were you instructed by Mr. Slade to go out and get these fellows to identify this man?

Mr. McCULLAGH. No; I wouldn't do that.

Mr. HILL. You would not have done that for them?

Mr. McCULLAGH. No.

Mr. HILL. You wouldn't have done it if they had asked you to do it?

Mr. McCULLAGH. No.

Mr. HILL. As a matter of fact you had not seen Mr. Slade at that time, had you?

Mr. McCULLAGH. No; I had not.

Mr. HILL. When you finally ran into this man Darling and knew that he knew where Mr. Safford was, you went along with the crowd of some four of you to find this witness, did you not?

Mr. McCULLAGH. Yes.

Mr. HILL. Did Mr. Slade at that time say to Mr. Safford that they wanted him to go back and identify this man?

Mr. McCULLAGH. No.

Mr. HILL. In other words, did he caution him to be sure to identify him, or use any effort of that sort?

Mr. McCULLAGH. No; he did not.

Mr. HILL. Or make any such request of him?

Mr. McCULLAGH. No; he couldn't do it. In fact, the morning—the little statement I made during my testimony on Safford's trial—I never could get anything out of him. We couldn't get him to identify the photograph. He said, "It looks like his jaw and it looks like his bull neck, but," he said, "I want to see the original."

Mr. HILL. That was the stand he took?

Mr. McCULLAGH. Yes. He told me the morning going down to the trial—I went up and met him at One hundred and forty-fifth Street and Broadway the morning of the hearing, so we would have him there, and we went and rode down on the Riverside Drive stage on top, and he said, "Mac, Mr. Slade has been very nice to me since I have been here, but," he said, "I am afraid I am going to dis-appoint him." He said, "I don't know whether that is the man." I said, "This picture was taken 10 years ago. If it is the man, say it, and if it is not, don't say it." He said, "If it is not him, I wouldn't say it for Mrs. God"—that is just what he said.

Mr. HILL. When he did see James W. Osborne there, did he identify him?

Mr. McCULLAGH. In a minute; yes.

Mr. HILL. As the man who was there at the hotel?

Mr. McCULLAGH. As we went in the court room, Mr. Osborne, I believe, had his hand to his face, and he was on the witness stand, and he identified him the minute his hand came down. He said, "There he is, right there."

Mr. HILL. That was James W. Osborne, the lawyer?

Mr. McCULLAGH. That was James W. Osborne, the lawyer. In fact, that was the first time I ever saw Mr. Osborne in my life myself.

Mr. HILL. This fellow from the McLellan Detective Agency that followed you after you testified and endeavored to get Mr. Safford drunk—is that the agency employed by Mr. Marshall or his forces in any way, do you know?

Mr. McCULLAGH. I can't say that. He was employed by Mr. Osborne, because they asked that on the witness stand.

Mr. HILL. He said they were his detectives?

Mr. McCULLAGH. He said they were his detectives.

Mr. HILL. And he is the fellow that followed Mr. Safford around trying to get him drunk that night, but got him sick instead?

Mr. McCULLAGH. Yes.

Mr. HILL. That is all I desire to ask.

Mr. NELSON. You made reports to your chief, did you?

Mr. McCULLAGH. The first couple days I did; yes; just as a result of my investigation.

Mr. NELSON. What did you report in your first report?

Mr. McCULLAGH. I reported that I went out to Plainfield and met Mr. Kitchin.

Mr. NELSON. Did you report the identification by Mr. Kitchin?

Mr. McCULLAGH. I reported that Mr. Kitchin identified the photograph.

Mr. NELSON. That is in your report?

Mr. McCULLAGH. Yes.

Mr. NELSON. Where is that report now?

Mr. McCULLAGH. I don't know.

Mr. NELSON. Have you a copy of it?

Mr. McCULLAGH. I think the United States district attorney has it. Mr. Hannan is out here now, and he can tell you.

Mr. NELSON. I want to know what you know about it.

Mr. McCULLAGH. I don't know anything about the report.

Mr. NELSON. The only report you made was to Mr. Hannan?

Mr. McCULLAGH. Yes. I reported verbally to him, and he took it down.

Mr. NELSON. Oh, you did not make a report in writing?

Mr. McCULLAGH. Not in my own writing. I reported verbally and he wrote it down.

Mr. NELSON. Did you make any report in writing to Mr. Hannan?

Mr. McCULLAGH. Not in my writing; no.

Mr. NELSON. There is no report in your own hand writing?

Mr. McCULLAGH. No; there is not.

Mr. CARLIN. Did you know Rae Tanzer or Osborne either before you were employed on this case?

Mr. McCULLAGH. No; I never met her until after my own trial—mistrial.

Mr. HILL. Is it a fact that all of you fellows practically that were in the case against Mr. Osborne have been indicted?

Mr. McCULLAGH. Yes; all except Mr. Hannan. I don't know how he escaped.

Mr. NELSON. You testified in your own case?

Mr. McCULLAGH. No; I have not.

Mr. NELSON. Did you testify in the hearing?

Mr. McCULLAGH. In the hearing, yes.

Mr. NELSON. You testified in Mr. Safford's case?

Mr. McCULLAGH. Yes.

Mr. NELSON. You have at this time covered generally that testimony?

Mr. McCULLAGH. Yes.

Mr. CARLIN. That is all, Mr. McCullagh; you may be excused.

(The witness was excused.)

TESTIMONY OF HON. MARTIN W. LITTLETON, OF NEW YORK CITY.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. Your name and address?

Mr. LITTLETON. Martin W. Littleton; 113 East Fifty-seventh Street, New York City, is my residence.

Mr. CARLIN. Your profession?

Mr. LITTLETON. I am a member of the bar of New York.

Mr. CARLIN. There were a number of persons indicted in New York in connection with the Rae Tanzer case. I believe you represented some of them as counsel, or do now? Whom do you represent?

Mr. LITTLETON. I represented in the trial the three defendants, I think they were, David and Max Slade, and this gentleman who just left the stand, Mr. McCullagh. I think those were the three indicted together and tried together. The trial was had, or partly completed before Judge Russell, who sat in New York at that time.

Mr. CARLIN. Did you represent Safford?

Mr. LITTLETON. No. This is the only representation I had out of the whole matter.

Mr. CARLIN. Was that case tried to completion?

Mr. LITTLETON. It was not. The case was tried before Judge Russell and a jury. It was begun—I would not like to be held to the date—sometime in June, as I recollect it, toward the latter part of June. It went on for a number of days, I should say a week. We then adjourned to the room where the alleged interference with justice had taken place. You understand the indictment in the case was against these men for interfering with the administration of justice under a Federal statute which made that a crime. We adjourned to the small room where the original examination in the Rae Tanzer case had taken place, there to reenact to some extent the events of the alleged interference with justice which it is claimed had been committed by the Slades and McCullagh.

While in that room, and after having had some sessions there, Judge Russell was taken ill in the morning, and the case was adjourned on account of his illness for several days; I will not be bound by any number of days, but a few days. At the adjourned day it was announced by the district attorney, Mr. Marshall, that he was still ill. Another adjournment was taken. The jury was still held, of course. On the second adjourned day, as I recall it, Mr. Marshall announced he was still ill and there was not any likelihood or much likelihood that he would be able to resume the trial, and then he suggested that we discharge the jury.

Mr. CARLIN. How far had you proceeded with the trial up to that time?

Mr. LITTLETON. The Government's case was very nearly completed, as I understand it. I think the chief part of the testimony was in. All the episodes regarding their interference with justice, all of the disputed questions regarding Oliver Osborne, with which perhaps you have become more or less familiar in this hearing—

Mr. CARLIN (interposing). Yes; we have heard of it several times—

Mr. LITTLETON (continuing). The examination of his part in the whole matter had been completed. In fact, the case had gone off, as I contended, on a side issue, in an inquiry into who Oliver Osborne was. I had objected all along to trying anything but what was in the indictment, as I understood it. At all events, we got off into that,

and we had about completed everything in connection with that. The last thing that happened, as I recall it—

Mr. CARLIN (interposing). Did you discover Oliver Osborne up to that time?

Mr. LITTLETON. We had not. The last thing that happened was the Government called a detective who had been employed by the Slades to verify the facts regarding the charges made by Rae Tanzer against Mr. Osborne before they brought the action, and he was on the stand. I think his name was Hannan. He was called by the Government, and the testimony had proceeded so far as to show that he had made written reports to the Slades as verification of Rae Tanzer's story to them, preparatory to their filing the complaint and proceeding with the action. I had asked him to produce the original reports which he had made, if he had them, and he said the Government had taken them from him and had them now. I then called on the Government to produce them, because, of course, that, as I conceived it, went to the test of their good faith in bringing the action. If they were advised by competent detectives and by witnesses that there was a case, it might be one thing, and if they were not, it might be another thing. At that juncture I offered them the duplicates—I had duplicate copies of the reports—

Mr. CARLIN (interposing). Did the Government refuse to produce the reports?

Mr. LITTLETON. They did.

Mr. CARLIN. The court ruled against production?

Mr. LITTLETON. He would not compel them to produce. I then had Hannan identify the duplicates and offered them in evidence. While debating that question, the judge called me up and told me that he was ill, and we took an adjournment, and that was the last we ever held of the case, except that on the discharge of the jury I protested against the discharge of the jury on the ground that jeopardy had occurred so far as my clients were concerned, and that there was no justifiable excuse for discharging the jury, and I saved the point. They first brought Judge Hunt in to have the jury discharged by him, and I offered to go on with the trial before Judge Hunt, as they had adopted that practice, which has since been repudiated by the courts, and which I will say I had some doubt about at the time; but as long as it had been adopted then and had not been passed on, I offered to go ahead with Judge Hunt with the trial. but they declined.

Mr. CARLIN. Who declined?

Mr. LITTLETON. The Government declined—the district attorney declined to go ahead. He expressed apprehensions regarding the appeal in the other case, which was then pending, regarding the attitude of the court.

Mr. CARLIN. I do not catch that.

Mr. LITTLETON. The district attorney expressed his fear that the practice theretofore adopted in another case which I was endeavoring to follow would not be sustained by the circuit court of appeals, which was about to hand down an opinion. Then he asked Judge Hunt to discharge the jury, and I took the point that if Judge Hunt could not take all the steps in the case he could not take one; that he had no business in the court room at all, to be practically frank

about it, but to be respectful, and Judge Hunt agreed with me and said he would be glad to get out of the court room in any orderly manner he could. He retired and left us there with the jury. Then an order was prepared reciting the illness of Judge Russell and signed by him in the hospital and entered, discharging the jury, to which I objected. The record, I believe, stands that way. That is my recollection of the events.

Mr. CARLIN. You say you observed the reenactment of the scenes upon which these three men were indicted?

Mr. LITTLETON. Yes. They were reenacted as nearly as the Government, I suppose, could do it in the room where they took place. That is why we adjourned to that room.

Mr. CARLIN. Have you any opinion you wish to express about that?

Mr. LITTLETON. I have not any desire to express any opinion. Of course, I was counsel in the case and had very strong convictions about the facts and law governing the case, perhaps swayed, as I would be, by the vehement partisanship which counsel are bound to get up in a case, at least which I get up, as a rule. I did not wish to volunteer any opinion to the committee about it at all. I fought the case out on the theory that there was no offense, that there was nothing which warranted the indictment of these men, and nothing that would warrant their conviction. That was the stand I took.

Mr. CARLIN. Have you any objection to giving the committee your opinion as to the matter?

Mr. LITTLETON. I have not any objection at all to saying anything or speaking on the subject in any way in which the committee desires my testimony. If it relates to the question whether the reenactment of the scenes and events constituted the offense charged in the indictment—I mean so far as I am concerned—I am perfectly willing to say that I was never able to see and have not been able to see since and am not able to see now any justification for the charges against the Slades and McCullagh for having attempted to interfere with justice. Of course, the case of Rae Tanzer was one of acute sensationalism at the time. The little room was packed with people. Everybody was on edge, so to speak, to see everybody else and hear what was going on. The claim that the Slades pointed out Mr. Osborne to Safford when they came in the room, like coming in that door there [indicating], only a much smaller room, if true, assuming everything that was claimed, was nothing more than what happened in the administration of criminal justice every day in the trial of cases; that is, that you go into a room and ask if this is the gentleman or that is the gentleman that did so and so. It is a matter of identification, differing only from the usual method of lining up the disputed person with a lot of others and letting somebody pick them out.

That is one way of having people identified without influencing them. I did not see anything reprehensible or offensive to the law in any sense in going into a room with your witness or anybody else you have in your case, and saying, "Was that the man who was at your office?" It does mean that you are telling him to say that is, if you do that. It may be leading, as we would say in court, but I suppose a man is entitled to do that. I never knew of any objection. I know I have never thought it was wrong, in

so far as it was alleged as an offense, to go in and point out Mr. Osborne, and direct attention to him and ask Safford if that was the man. Then there was some testimony about some nudging which went on, I think, between Mr. McCullagh and Safford, the significance of which was never interpreted at all—nudging going on when they came in sight of Mr. Osborne, another thing which I did not see.

Mr. CARLIN. You say there was no justification for the indictment? What is your impression as to the reason for finding it?

Mr. LITTLETON. I have not any impression about it which is based upon any facts, and therefore I do not think I ought to give an impression. I have not any information about why the indictment was found. Of course, I know the whole course of the case. My real position in the whole case, gentlemen, was this—and probably this will embody all you really wish to ask me—my position was, as the record shows, that the Federal courts never had any jurisdiction of any of this matter; that if the Slades had brought a blackmailing suit, as it was claimed, there was a statute against blackmail, of the State, and the courts of the State were open, and that none of it had any logical or rightful place in the Federal jurisdiction.

Mr. CARLIN. Then, if it had not a rightful place, your idea was that it was wrongfully there?

Mr. LITTLETON. They might have misconceived—I may be wrong because it is as perfectly easy for me to be wrong as it is for anybody else; but I considered they had misconceived the jurisdiction altogether in the original case against Rae Tanzer. I had no interest in her, I did not care anything about it, and professionally I had no concern with her. I had never seen her except at this trial, but my position in the case was that the original complaint against her, that she had sent a letter under section 415, I think it is—the common section for intent to defraud or devising a scheme with intent to defraud—that sending a letter such as was sent was not a letter which was embraced or intended to be embraced within the denunciation of that statute, and that therefore the original jurisdiction, on which all these other indictments rested, was wrong, and therefore the whole business was in the court out of place. I think the records probably are altogether too full of my protestations of that sort during the trial.

Mr. CARLIN. What is your idea as to the proceeding which you have designated as wrongful—what was your idea of the bringing or starting of that proceeding?

Mr. LITTLETON. I do not know, Mr. Chairman. There might have been a number of reasons. Of course, it might have been that the Government thought, and thought sincerely, that the jurisdiction was well placed in the fact she had sent this letter to Mr. Osborne, and it was a letter designed and devised as part of a scheme to defraud him of money. But I claimed that all the letters taken together indicated that if she was a blackmailer or was devising a scheme to get money, that as to the original injury to her there was no question. The very appearance of Oliver Osborne himself, acknowledging he had done this thing, proved she had received this injury, and that therefore the single point in which she might have been wrong—

Mr. CARLIN (interposing). Did Oliver Osborne appear?

Mr. LITTLETON. I took that theory of it, in making the argument, and simply said that the most the Government could claim was that this was an injured person, deceived by some one and mistreated by some one, but who had lost the identity or intended to fasten identity on some one else. That was the single false link in it, if it was false.

Mr. CARLIN. I was trying to get your idea, Mr. Littleton. After having said, in your opinion, these cases were wrongfully in the Federal court, and having been so closely and intimately connected with the matter as you have been, I wanted to get your idea as to the impression made upon you by their appearance in the Federal court.

Mr. LITTLETON. I had very many impressions about it. They varied a great deal from time to time. I never really——

Mr. CARLIN (interposing). Give us your impressions, whether they varied or not. Tell us what impressions you had there.

Mr. LITTLETON. I think that record, Mr. Chairman, in the examination of Commissioner Houghton—if you recall, he was called as the first witness by the Government in the Slade trial to prove the jurisdiction, the fundamental thing, that there was a proceeding pending before him as commissioner, in order to show that there was a course of justice which had been interfered with by the defendants. That was the foundation, the fact that was first established. I examined him at the time as to how he got jurisdiction, and who furnished him with the complaint and drew the complaint; where it was drawn; and if it was not drawn originally in handwriting, if he could not produce the original copy in handwriting instead of type-writing, and I think I said at that time that it was my purpose to claim that this had been brought improperly in the Federal court, and I used the expression, I know, frequently, that the jurisdiction of the court had been wrenched in order to accommodate conditions to this particular case.

Mr. CARLIN. That is what I am getting at. What are your views as to the reasons for the situation, as you claimed it?

Mr. LITTLETON. I was not permitted to express my views about it at the time. I do not think I ever went so far as to say why I thought it was done. I contented myself sufficiently with the challenge that it ought not to be done, but had been done.

Mr. CARLIN. We want your views now. You say you have not had an opportunity before, but you have an opportunity now.

Mr. LITTLETON. My first impression was that the Federal court had been sought in this particular matter, and jurisdiction had been asserted and taken, because it would be a more favorable forum to the plaintiff against Rae Tanzer. That impression persisted pretty generally through the trial, and I could not see why that would be so, in reasoning about it, for Mr. Osborne had been for 16 years assistant attorney in the State court, and nearly every piece of machinery in that department was familiar to him, and many—not many, but certainly some of the men in the office—had held over from his time, and I could not see why he should not have sought that jurisdiction. I knew of no reason and knew of no fact which would warrant me in saying that his going into the Federal court put him in a more favorable forum or any more favorable environment. I criticized at the time the fact that he was then the special appointee of the Department of Justice in certain cases then pending in the Federal court.

and that he had necessarily from that the run of the machinery of the prosecutor's department, because he had been assigned, employed, or retained, as you may use it——

Mr. CARLIN (interposing). You mean he had the run of the machinery of the Federal court there?

Mr. LITTLETON. I so contended through the case and so assumed and so felt, that a man who was a special prosecutor, cooperating with the Government in the prosecution of other criminal cases, would at all events have the run of the place, as we use the expression.

Mr. CARLIN. You mean it would have been easy for him to procure an indictment before the Federal grand jury and try it in the Federal court?

Mr. LITTLETON. I think he would have been readily accepted by the grand jury if he presented himself to them, he having come from the Department of Justice and being connected with the prosecution of other cases. I think the grand jury would pay rather quick attention to the man who held that position.

Mr. CARLIN. Mr. Littleton, do we gather that your impression of the matter, as expressed, is to the effect that the Federal grand jury was used by Mr. Osborne in the criminal proceeding in order to, at any rate, help the civil suit which had been brought?

Mr. LITTLETON. I would not like to say. These things are often misunderstood, and sometimes a man can do a great deal of injustice by an unguarded word or an idle statement. I am glad to tell the committee anything that I have in my mind. Mr. Osborne and I have been friends for a great many years; and while we have fought each other in cases and sometimes grown bitter, I have known of nothing to interrupt that friendship; and if I appear to have great care in what I say, I want the committee to know that I have that care, because I do not want to do an injustice to anyone.

Mr. CARLIN. You are very friendly to Mr. Osborne at this time?

Mr. LITTLETON. Yes, sir; and I will say I have been friendly to Mr. Marshall, the district attorney, also. I have no reason not to be. I feel now, and so stated, that I regarded it as very unfortunate, that the whole crowd involved on the plaintiff's side to a civil case should have been indicted, when the civil case was pending, especially when there was a complete answer claimed to be available to the civil case, and readily at hand. That is not only true of this case, but of any other case. I have seen it happen, and I think it is unfortunate always that any person in a civil case which is acute and critical, should seek the indictment of the other side of the case in anticipation of the civil trial or before the civil trial was had, especially when everybody had stipulated in this case a day for the trial to come on. I felt that was very unfortunate.

Mr. CARLIN. You mean the civil case had been fixed for trial?

Mr. LITTLETON. They had all agreed before the court, as the records show, that the civil case would be tried at—well, very speedily. The day was fixed, I think. Everybody said they were ready for trial. In the meantime, Oliver Osborne had appeared, it was claimed, and I said if that was true, that it was a complete answer to the civil case, and why not go on with the trial of the civil case, and why indict the plaintiff, the plaintiff's witnesses, the plaintiff's lawyers, and detectives——

Mr. HILL (interposing). And the plaintiff's family.

Mr. LITTLETON. Yes; and I believe the plaintiff's sisters also. That is what I regarded as very unfortunate, unfortunate for them and unfortunate because it invited criticism.

Mr. CARLIN. What was the effect of the criminal indictment upon the civil suit?

Mr. LITTLETON. Well, as I recall it, the civil suit was brought, and shortly afterward the plaintiff was arrested. She changed attorneys, or, at any rate, she did not go back to the Slades any more. I will not say she changed attorneys, because I do not know that, and then it was claimed some recantation had been made of her original claim. That was published and claimed, but I never saw the recantation. I saw somewhat of an incomplete record of her having gone before the district attorney, or his assistant, perhaps Mr. Wood—I think it was Mr. Wood—and having been asked regarding her identification of Mr. Osborne, and she demanding that they bring Mr. Osborne in so she could see him. I think that is the way the record ran, and then, of course, whatever there was in it, the effect of that recantation, to my mind, ended the civil lawsuit. Whatever prospect it had was gone. I do not suppose there was ever any real intention, after the complaint against her, to try that civil suit—I mean at that time. I think the indictment against her, or the complaint against her, destroyed—

Mr. CARLIN (interposing). We are investigating the conduct of Mr. H. Snowden Marshall as district attorney for the southern district of New York. Is there anything in these proceedings with which you are familiar which would lead you to believe or think Mr. Marshall had used his office in any way other than is right and proper?

Mr. LITTLETON. Well, Mr. Chairman, I will make my answer, and I will ask leave to apply it after I have made it. I had thought that the assumption of jurisdiction in these cases by the Federal authorities, the assumption of jurisdiction to prosecute in the first instance Rae Tanzer in the Federal court as and for sending a letter through the mails which was part of a scheme devised to defraud, was an improper assumption of jurisdiction. I think that the case never ought to have been in that court. I will not say there can not be two opinions about it, but I will say that I think you will search the records of the court in vain to find where such jurisdiction has been assumed or asserted in regard to a similar state of facts. After that was done, of course the indictment of Safford, the indictment of Tanzer and Tanzer's sisters, the indictment of the Slades, and McCullagh, all rested upon the single act of fixing the jurisdiction, by the complaint, before Commissioner Houghton, for without that, of course, there would have been no testimony given in the Federal case, and there would have been no interference or alleged interference with the Federal courts; none of these things could have been brought out, or none of these indictments could have been returned in the Federal court. I think the original and vital mistake or wrong or wrongful assumption of jurisdiction was in assuming to try and prosecute her under a Federal statute, when, obviously, if she was what was claimed to be, and her lawyers were what was claimed to be, there was a perfectly plain remedy in the State courts. It was an offense under the State laws and belonged in the State courts, and logically belonged under the criminal administration of

the laws of the State. When those two things were done, one without any question and one without any precedent, as far as I could make out, I naturally criticized in my own mind the assumption of jurisdiction. I do not know about the indictment of Safford. I mean I did not participate in any of those proceedings. I had those records, because I had to read them in the preparation of the Slade trial; the record in this trial, and as far as the indictment of the plaintiffs, Tanzer and her sisters, they all must have sprung out, as well as the indictment of the Slades, of the wrongful assumption of jurisdiction in the beginning, and that, I consider, was the fundamental thing which was done that ought not to have been done.

MR. CARLIN. Will you please read the question, Mr. Stenographer? (The stenographer read as follows:)

We are investigating the conduct of Mr. H. Snowden Marshall as district attorney for the southern district of New York. Is there anything in these proceedings with which you are familiar, which would lead you to believe or think Mr. Marshall has used his office in any way other than is right and proper?

MR. LITTLETON. Now, if you include in that everything that I know concerning these records, there is one thing I desire to direct your attention to. I mean to answer this question as frankly as the committee expects me to. The proof showed in the trial of Slade that the affidavit for the arrest of Safford, had been made by Mayhew, the post-office inspector—and if I have not got the name correct, it will appear in your records.

MR. NELSON. Yes; that is the correct name.

MR. LITTLETON. Mr. Mayhew, in testifying, testified that he never had been to Plainfield; that he never had seen Safford; that he had no idea in the world whether Mr. Osborne was at Plainfield at all or not, and I confronted him with his affidavit, which was not on information and belief, but which was a direct and positive oath; I showed him that he had made this affidavit, wherein he charged that Safford was guilty of perjury in having stated that Mr. Osborne was at Plainfield, and he avowed absolute ignorance of any of the circumstances, as to whether he was actually at Plainfield or not. I then asked the question how in the world he came to make such an affidavit, and my recollection is—although I have not seen the record—that he answered that he was directed to do so by Mr. Rodger Wood, the assistant district attorney. I know that that is indefensible.

MR. NELSON. He made an affidavit that Mr. Safford had perjured himself in his testimony?

MR. LITTLETON. Yes, sir.

MR. NELSON. He made an affidavit, knowing nothing of the facts?

MR. LITTLETON. Yes, sir.

MR. NELSON. As a lawyer, was that a matter of perjury—the statement in which he stated Mr. Osborne was not there—or not?

MR. LITTLETON. Yes; undoubtedly. It is just the same as if he had asserted the contrary of the facts. If a man asserts a thing is not true, and if he does not know whether it is or not, it is perjury.

MR. CARLIN. Then the post-office inspector admits having perjured himself at the suggestion of the assistant district attorney, Mr. Wood?

Mr. LITTLETON. It is put together, Mr. Chairman, by your own statement.

Mr. CARLIN. Just answer my question. You know what I am driving at.

Mr. NELSON. Are you not asking Mr. Littleton to give conclusions rather than facts?

Mr. LITTLETON. What is the question?

(The stenographer read the question.)

Mr. LITTLETON. I wish you would let me answer that question this way: I prefer to just state—and of course I am willing to tell all I know about it—but I do not want to be put in the position of characterizing it. In the first place, it is not pleasant, and in the second place, while I have no fear of anyone, I am simply unwilling to say anything about anyone unless I am quite sure of what I state.

Mr. CARLIN. The committee is confident that you will state nothing but the facts.

Mr. LITTLETON. I say this: According to the evidence in this case, Mayhew admitted he made a positive affidavit as to a state of facts which he did not know of, and which, in my opinion, under the law of the State of New York, amounted to false swearing or perjury, and he stated when crowded on the question as to why he did it that he was directed to do so by Mr. Rodger Wood, assistant district attorney.

Mr. NELSON. And that statement was the basis of the indictment against Safford?

Mr. LITTLETON. The first arrest of Safford.

Mr. NELSON. The first arrest of Safford?

Mr. LITTLETON. Yes, sir.

Mr. CARLIN. I understand that the record in the Safford case is here.

Mr. LITTLETON. There was some question in my mind on reflection coming down here—and I have not examined any of this—as to whether he said Mr. Marshall or Mr. Wood directed him to make this affidavit.

Mr. NELSON. You are correct. He said Mr. Wood. I have read the record.

Mr. LITTLETON. I satisfied myself on reflection that was so.

Mr. CARLIN. Do you know, Mr. Littleton, any other fact which you think would be interesting or would enlighten—I do not mean interesting but would enlighten—the committee in its duty which it is discharging?

Mr. LITTLETON. I do not summon to my recollection anything but what would be very general gossip about it. I do not think of anything which I could state as a fact. There were many, many things which occurred in the trial; many developments about it that were a subject of some criticism in the trial, but I would not, in testifying before the committee, in a matter of this importance, want to inject into this record a matter in which I am involved in a partisan sense, except I be absolutely sure whereof I speak.

I think I put my finger on the objectionable thing when I stated that they should not have taken jurisdiction in this, for the Federal court. Everything that followed after that might easily have been in the order of events, but I think that was the one thing that should not have been done.

Mr. CARLIN. We are trying to ascertain whether there is anything in that wrongful act, as you designate it, which might be considered as wrongful on the part of Mr. Marshall, whom we are investigating.

Mr. LITTLETON. Well, it depends quite a lot on your point of view. I have believed, and believe now, and have believed for a long time, that the administration of the criminal law in the particular Federal districts in which I have had any occasion to go—and I do not know whether it is chargeable to Mr. Marshall or to the system, and you can figure it out for yourselves as to that—I feel that the ease with which men are indicted, the more than ex parte way in which it is done, or the less than ex parte way in which it is done, and the general method of the administration of the power and potentiality which accompanies the exercise of this very great function, is very unfortunate in New York. It is true probably of other States, but I think it has been true particularly in New York. I think there are a great many inherent vices in the administration of criminal justice. Whether Mr. Marshall is to be charged with all of this or whether it is part and parcel of the general plan that has grown up, I do not care to attempt to discriminate as to. I do say that the ease with which men are indicted and haled to court—picked up overnight and indicted—is unfortunate. The whole Federal bench in certain districts seems to regard itself not as a judiciary to determine the boundaries of the law and apply the law to the state of facts but seems to regard itself as an executive part of the Government and to reach out with a statute and plaster it on some one, as though a part of the executive branch of the Government instead as a part of the judiciary. Instead of adopting the attitude of the judiciary and measuring the facts by the law, they adopt the attitude of an executive department of the Government. It has been true for some time in the administration of criminal law in that particular circuit. I am not acquainted with Mr. Marshall's conduct in any case except this particular one. I have adverted to the action of the Government in this case, to the two things which I thought were particularly safe to say; that is, the wrenching of the jurisdiction of the Government to take cognizance of this thing, and the arrest of Safford on an affidavit by a man who admitted he did not know anything about the facts. Those two things, in my opinion, were things which were the subject of criticism.

Mr. CARLIN. Was there any testimony in the case explaining the conduct of Mr. Wood in procuring the making of that affidavit?

Mr. LITTLETON. No, sir; there was never any reply made to it, as far as I know, either there or afterwards.

Mr. CARLIN. Mr. Littleton, you have quite a practice in the Federal courts, have you not?

Mr. LITTLETON. I have been in quite frequently, Mr. Chairman. I would not like to say it is the place where I go oftenest. I think I am in the other courts most.

Mr. CARLIN. Referring to the ease in which indictments are found, I would like to ask you whether or not, from your experience in New York, it is your belief that indictments are found upon the evidence before the grand jury, or upon the will of the prosecuting officers?

Mr. LITTLETON. I served in the district attorney's office about four years—in fact, eight years in different jurisdictions—and I know what influence the man conducting the affairs before the grand jury has. I know how easy it is, by his intimation or indication, to guide the deliberations of the grand jury, or to direct them. I know how unnecessary it is for him to say, "You must do thus and so." He can do it by so many other ways, much more effectively, and hence I feel it would be almost better to sometimes have an examining trial instead of an indictment; that a man arrested should be taken before a magistrate and have an open trial, and let it be determined there whether there is going to be a final trial or not, and if determined not, let him go, but if there is, let it be crystallized into the more permanent form of trial, and not charge him with an offense, a criminal offense, and take him before a Federal grand jury, into which most everything can go, apparently, and out of which nothing but newspaper articles can come, which is the only source out of which any stuff from the grand-jury room can be given to the community as to what is happening in the grand-jury room about a case, as occurs in New York.

As long as this is possible men's reputation may be withered by a blast, and the reputation that a man may have built up by years of hard work, and his reputation with his friends, the accretion of years, may go for nothing. His friends and neighbors know that he is under investigation by the grand jury, and it is whispered and intimated, and finally out pops an indictment, and then follows a lot of publicity and talk and then a trial. I should far rather, if I had to be charged with an offense, have them swear out a warrant and take me before a magistrate, and make up the case in public, and if there is any reason for trying me, let them do it. There is that rule in some of the Southern States, under which a man has to go before a magistrate, and it was the function of the magistrate to either let him go or hold him for the grand jury.

Mr. CARLIN. What do you think of the practice of having the district attorney appear before the grand jury?

Mr. LITTLETON. Well, some one must be there to give shape to the proceedings and direct them. I think he ought to be there for the examination of the witnesses. I think if the law were observed in all cases it would be all right. The law itself is wise enough, that he should be there at all time except at the deliberations of the grand jury. He ought to examine the witnesses and retire, and if they want to know the law he ought to take up the statutes and explain them to the grand jury.

Mr. CARLIN. Do you not think it would be a better practice to have the law given to the grand jury by the court?

Mr. LITTLETON. Yes, sir; but it is impracticable, because they could not be going into the court on the vast multitude of things coming before them. They could not be going into the courts and asking for the law covering each particular phase. It could not be resorted to every time there is trouble over some point. There is no question that sooner or later, with all its honorable and ancient attributes, and with all our disinclinations to surrender all of these things we are accustomed to, if the grand jury is not used with less oppression, less secrecy, less one-sidedness, and if it is not made an

impartial inquisitorial body, for the purpose of formulating charges upon sufficient evidence—

Mr. CARLIN (interposing). That is what it was intended to be.

Mr. LITTLETON. If it does not perform that function, sooner or later, we are going to force the accuser to bring the accused into court on an examining trial and let that be the beginning and the sole beginning of those things.

Mr. CARLIN. Mr. Littleton, was this matter of Mr. Wood's procuring the affidavit by the post-office inspector ever called to the attention of Mr. Marshall?

Mr. LITTLETON. He was there at the time Mayhew testified. I say that positively. I do not think I can be mistaken about that. He was there at the time. It was in this trial—it was only a little time before the case collapsed, or the judge became ill, but they were sitting at the time at the table together. My recollection, I do not think, can be at fault in that.

Mr. CARLIN. Are you a member of the bar association of New York?

Mr. LITTLETON. Yes.

Mr. CARLIN. Which one?

Mr. LITTLETON. It is the association of the bar. That is the real name. I am a member of both of them—the county lawyers' association, too. There are two of them. I am a member also of the State Bar Association.

Mr. NELSON. Mr. Littleton, you used to be a member of our committee and a Member of the House, and perhaps we may trespass upon your patience a little.

Mr. LITTLETON. Yes.

Mr. NELSON. You have had occasion to look over this whole case in reference to the Slades, have you not?

Mr. LITTLETON. Yes, sir.

Mr. NELSON. Now, Miss Tanzer was indicted for what offense?

Mr. LITTLETON. She was indicted for having devised a scheme directly to use the mails to extort money. That is my recollection. I do not think I saw that indictment.

Mr. NELSON. Was there any other offense charged in the indictment?

Mr. LITTLETON. I had no relation to her, and therefore never examined her case except as related to the Slades.

Mr. NELSON. Is there just one indictment against the Slades?

Mr. LITTLETON. There are several charges against the Slades.

Mr. NELSON. What are they?

Mr. LITTLETON. The one we were trying—we bothered about no other charge except the alleged interference with the administration of justice, by causing this identification to be made. There was another clause in the indictment, but I did not occupy my mind with it at all.

Mr. NELSON. Was there any count there as to his using a photograph?

Mr. LITTLETON. Yes, sir; there was a count in one of the indictments for having made up a false photograph. I do not remember the language of it. We did not pay much attention to it, and we lost sight of it in the trial. We were prepared to explode that if it was brought up in the Government's case.

Mr. NELSON. That was not involved in the Government's case!

Mr. LITTLETON. It was involved in the indictment, but it was not actually tested. The Government offered no testimony on that subject.

Mr. NELSON. In other words, the Government seemed to abandon that charge?

Mr. LITTLETON. They never mentioned it as far as I know in the trial—in the whole trial. It may have been mentioned in Mr. Wood's opening to the jury. They threatened to complete their case by calling some witnesses on that branch of it, but I always laughed at them. I used to say, "I know you are not going to do it, and I am not afraid of it." And I had very good reasons for feeling that way.

Mr. NELSON. What facts did you have?

Mr. LITTLETON. It is really hard to recall, but my recollection is that it ran like this, that this man LeGendre—

Mr. NELSON (interposing). We have his testimony and it is not necessary to relate that. Did you have anything besides his testimony on the point, that this indictment was based somewhat on the use of this photograph, and that was a mere pretense?

Mr. LITTLETON. Well, I have the absolute information, as I regarded it, that LeGendre had done what he had done at the instance of the Government, or Mr. Osborne and his representatives and associates; that he had been sort of put over on the Slades to get them in a position where they could be accused.

Mr. NELSON. You had his testimony?

Mr. LITTLETON. Yes, sir; we were not at all afraid of the charge regarding that. I never expected it to come up.

Mr. NELSON. What other matter do you recall was charged against the Slades—what other facts?

Mr. LITTLETON. I give you my word, I do not recollect it now.

Mr. HILL. Conspiracy?

Mr. LITTLETON. There was a conspiracy charge, a conspiracy to commit this offense. That is the way by which nearly everything could be gotten into the case.

Mr. NELSON. That is merely a count used for a purpose?

Mr. LITTLETON. That is the open door to all evidence.

Mr. NELSON. So that anything excluded as to one point might apply to another?

Mr. LITTLETON. Yes.

Mr. NELSON. Outside of those two you have no recollection of anything?

Mr. LITTLETON. I do not have any recollection now about it, Judge. The exact form of the indictment has gone out of my mind. I have not seen it for some time.

Mr. NELSON. Do you know the Slades?

Mr. LITTLETON. Yes, sir.

Mr. NELSON. Had you known them before you became their attorney?

Mr. LITTLETON. I had not.

Mr. NELSON. Had they ever been charged before any bar association, or in any other way, in the courts, with any offense?

Mr. LITTLETON. No; not that I know of.

Mr. NELSON. Have you ever heard anything outside of this case as to their reputation?

Mr. LITTLETON. Not until this case came up.

Mr. NELSON. Have you heard anything since this case came up?

Mr. LITTLETON. Of course there has been much talk.

Mr. NELSON. Anything within your knowledge?

Mr. LITTLETON. Nothing within my knowledge at all. When a man is indicted after that time it is hardly fair to test his reputation, because his reputation has been impaired.

Mr. NELSON. Well, up to that time?

Mr. LITTLETON. I had heard nothing about it.

Mr. NELSON. Here is a curious thing: Two attorneys are indicted for these offenses, one of framing up a photograph, which was, according to the testimony of LeGendre, framed up—or the idea of getting the photograph—was suggested in the district attorney's office, and it was never used by the Slades, and the other is the charge of impeding justice.

Mr. LITTLETON. Yes; obstructing justice.

Mr. NELSON. How do you account for the two attorneys being indicted for these offenses?

Mr. LITTLETON. Well, some things are sometimes not altogether accountable. I do not know. I never saw any justification for the indictment of the Slades. I never did, and do not now.

Mr. CARLIN. Relative to this photograph, I understood you were not afraid of that count in the indictment, relating to the procurement of the photograph, because you say you had information that the photograph was made in the district attorney's office, or at the request of Mr. Osborne?

Mr. LITTLETON. I had information that the suggestion as to making the photograph came from the other side. Whether it came through Mr. Osborne to LeGendre or how—I know that count was loaded and that nobody would pull the trigger on that.

Mr. CARLIN. You say the count was loaded? What do you mean by that?

Mr. LITTLETON. I mean LeGendre would be bound to the story he went to the Slades and attempted to get them to use the photograph. At any rate, he came there after having consulted with the other side how he should do it. They could not very well offer the photograph, because LeGendre was going to swear as to how the thing actually occurred. That would not be very fortunate for that count.

Mr. CARLIN. How do you account for the district attorney's office indicting Slade for that offense if the facts, as you understand them, are true?

Mr. LITTLETON. Well, I do not know, Mr. Chairman, how you account for them. I tried to account for them a week or so while the trial was going on, and I was quite able to do so to my satisfaction. I do not believe they ought to have been indicted. The Slades came to me in the country. I never knew them before. They wanted me to take their case. I expressed my disinclination to do so, because I was friendly to Mr. Osborne, and I did not want to do anything that would bring any sorrow into his family. This was a thing closely touching the happiness of the man, and a matter with

which any friend or acquaintance would not care to have anything to do. I went so far as to call Mr. Osborne on the telephone, after having decided to take the case, and told him I was going to try the case. He had been in my office on another matter, and had talked about his civil case; and I called him up and asked him if that was of such a nature as to disqualify me to take this case. He said it did not in any manner. I felt that he might conclude, having talked to me in my office while on another matter, that I had acquired some information—although I could not think of any—that would render me disqualified to act for the Slades. I made sure of it. I was surprised afterwards that anything regarding Oliver Osborne got into this record.

I am surprised, because Mr. Osborne said over the telephone that he did not think he was going to be a witness. He said he thought it was going to be tried on the simple question of trying to obstruct justice. I said I did not see how it could be tried on anything else. Mr. Marshall called me up later and said he understood I had expressed this view, and that the trial would be conducted on what the Slades had done to impede justice. It was understood that everything back of the 9th of March was inadmissible, and that it would only tend to divert the minds of the jury and confuse the issue. That would have left out all question of the Tanzer suit, and would have simply brought the case within the four corners of the indictment. Mr. Marshall expressed that as his view. I went into the case when the trial opened, and I was greatly surprised when Mr. Wood started the trial by stating this man had tried to blackmail Mr. Osborne. I protested until the sun set against that phase of the case going in. I think I stated that I understood that nothing would be brought in except the actual deeds done to obstruct justice. I was absolutely overruled; and I gave notice that, having brought that in, we would find out who Oliver Osborne was.

Mr. CARLIN. Who was Oliver Osborne?

Mr. LITTLETON. I do not know.

Mr. NELSON. I think you might help us in this rather voluminous case. What was the testimony in reference to Oliver Osborne?

Mr. LITTLETON. The testimony as to Oliver Osborne was he appeared in the office of Mr. Osborne in the morning, about 9 o'clock, in Broadway, at the office of Osborne, Lamb & Garvan. He arrived there and said he wanted to see Mr. Osborne. Mr. Peckham was in the office. Mr. Lamb was in the office, and the young lady at the telephone was in the office. He announced he had a very important letter which he wanted to deliver to Mr. Osborne, and he announced that he was Oliver Osborne and that startled everybody, according to the testimony. Mr. Lamb came out and looked at him, and went back in his room. Mr. Peckham called up Mr. James W. Osborne on the telephone and told him Mr. Oliver Osborne was there, and was coming to see him and had a letter to deliver to him. Mr. Peckham immediately took a car and went to Mr. Osborne's hotel and was there when Mr. Oliver Osborne arrived and received him——

Mr. NELSON. Who is Mr. Peckham?

Mr. LITTLETON. He is Mr. Osborne's associate. He is not a member of the firm, but he is a very good lawyer and a very nice young man who has been with him a very long time, and Oliver Osborne arrived there. He first announced to Mr. James W. Osborne and

Mr. Peckham that he was Oliver Osborne and delivered the letter which he had theretofore written, but not mailed, which letter I have forgotten the purport of, but it recited he was the person who knew Rae Tanzer and had been with her and she was an imposter as far as saying James W. Osborne was the person. He then said he lived in Boston. Mr. Osborne expressed his delight at seeing him and introduced him to his wife and had him repeat the story. He agreed to meet them at the district attorney's office the next afternoon, and then had to go to Boston. He went to Boston, and that is the last anyone heard of him. He gave his address which turned out to be an address at which he had never lived.

Mr. NELSON. Was that investigated?

Mr. LITTLETON. Mr. James W. Osborne testified that he sent up within a day or two a man to investigate the address of this man, and that he had never been there.

Mr. NELSON. As far as the testimony is concerned, the place from which he came is unknown?

Mr. LITTLETON. That is true, except it is claimed that thereafter they found he had resided on East Sixtieth Street, I think it was, in a boarding house. Various efforts to identify a man who had lived there as Oliver Osborne were made. Trunks were produced filled with various kinds of clothing and opened before the jury, to show the trunks that it was claimed Oliver Osborne lately had at the boarding house.

Mr. NELSON. Who produced the trunks?

Mr. LITTLETON. The Government. They are there with them yet. They did that for the purpose of showing these clothes were kinds of clothing that James W. Osborne never wore and did not affect—gaudy clothes.

Mr. NELSON. Did they produce any antecedent history of this man Osborne, besides the trunks and clothing?

Mr. LITTLETON. All they produced were two notes addressed "Oliver Osborne" and brought a girl across the street, from Bloomingdale's store, who said she got to flirting with him and that he came over and spoke to her and told her he was Oliver Osborne. He disappeared, too.

Mr. NELSON. He disappeared, too?

Mr. LITTLETON. Yes, sir; nobody ever knew the whereabouts of the man, or where this man went. His trunks were stored and left in the basement and they brought them out and put them in evidence.

Mr. NELSON. The only person who saw this Oliver Osborne was James W. Osborne, Mr. Peckham, and Mr. Osborne's wife?

Mr. LITTLETON. And Mr. Lamb, and the young lady in Mr. Osborne's office. I have forgotten her name.

Mr. NELSON. And his whereabouts now are not known?

Mr. LITTLETON. There has never been any trace of him as far as disclosed in this case, after the day he left New York—I mean left Mr. Osborne's apartment.

Mr. NELSON. You have seen a number of photographs published in the newspapers?

Mr. LITTLETON. Yes; we had a great many drawings of him.

Mr. NELSON. Did you have occasion to ascertain what Rae Tanzer's sisters were indicted for?

Mr. LITTLETON. I do not recall. I did know, but I do not recall this minute.

Mr. NELSON. Was it for perjury?

Mr. LITTLETON. I don't know. I had no interest in it. I did not look it up. I simply used the general position that everybody on the Slade side of the case had been indicted; that the whole case had been included in some form of indictment.

Mr. NELSON. Did you ever have any talk with Mr. Kitchen, the proprietor of this hotel?

Mr. LITTLETON. No, sir; he testified, I think.

Mr. NELSON. He testified?

Mr. LITTLETON. I examined him, I believe, in the trial.

Mr. NELSON. That is in the testimony?

Mr. LITTLETON. Yes; that is in the record. I remember his face. I remember his being on the stand, but I do not remember much about his testimony.

Mr. NELSON. Now, with reference to the reports that Mr. McCullagh made—you looked over those, I presume?

Mr. LITTLETON. Yes, sir.

Mr. NELSON. Where are those reports now?

Mr. LITTLETON. You mean the one Mr. McCullagh made?

Mr. NELSON. The ones Mr. Hannan made.

Mr. LITTLETON. The Slades must have the copies, but the Government has all the Hannan papers, or did have at the end of the trial.

Mr. NELSON. You saw the report?

Mr. LITTLETON. I saw the duplicate copies. Hannan gave the Slades copies, or furnished the reports. They have those.

Mr. NELSON. They have them now?

Mr. LITTLETON. I am sure they had. They had them when the case collapsed. I mean when the case ended.

Mr. NELSON. How long has it been since the case ended?

Mr. LITTLETON. Some time in July, I think—somewhere about the 20th of June the case started, and I think it must have gone over to the 10th of July.

Mr. CARLIN. The indictments are pending?

Mr. LITTLETON. Yes, sir.

Mr. CARLIN. They have not been called since?

Mr. LITTLETON. I have had no notice. There was some intimation they were to be tried some time ago, but I do not know when.

Mr. NELSON. Can you give me some names other than the Slades who have knowledge of some facts in this case?

Mr. LITTLETON. You mean about the trial and the episodes of the trial?

Mr. NELSON. Yes; that will enlighten the committee?

Mr. LITTLETON. I do not now think of anybody, Judge. I do not think of anybody now. There were a great many men around the fringe of this trial when it was going on—detectives and investigators and people of that sort—who told me many, many things from day to day, men who have gone out of my mind. They professed to know a great deal about it.

Mr. NELSON. It is still pending?

Mr. LITTLETON. Yes, but I have not given it any attention since the day that the jury was discharged.

Mr. NELSON. You are still acting as Slades' attorney?

Mr. LITTLETON. I assume I am still their attorney. I have talked to them casually from time to time.

Mr. NELSON. What effort has been made to have this indictment hanging over them dismissed?

Mr. LITTLETON. I have made no effort in their behalf. I asked Mr. Marshall some time ago when, if at all, he expected to try the case; that I would like to know for my own convenience; and I think he said he would not undertake to try it as long as Mr. Osborne was engaged in the prosecution of the New Haven cases. I think that is the only conversation I have had regarding the prospective trial.

Mr. HILL. Mr. Littleton, you stated that the system—the ease in procuring indictments—was probably not chargeable to the Government's prosecuting officers in the southern district of New York at that time; that it is a system that has grown up from time to time.

Mr. LITTLETON. I felt it was always too easy to do that.

Mr. HILL. Now, the same system that started back some time ago is still in continuance?

Mr. LITTLETON. As far as I know, it is. I want to be understood. The ease with which indictments are obtained—the manner of obtaining the indictments—for a great many years has been, to my mind, unfortunate for the administration of justice.

Mr. HILL. So far as your observations are concerned, the present district attorney has done nothing to correct that?

Mr. LITTLETON. I know nothing at all about it. This is the first criminal case I have had against this administration of that office. I think it is the first one I have tried.

Mr. HILL. Just one other question or two. Assuming that your position that the bringing of this suit or the wrenching of it from the State courts into the Federal courts is wrong, then the indictment against Rae Tanzer was wrong?

Mr. LITTLETON. Yes; of course.

Mr. HILL. The indictment against Dora Tanzer and the other sister is wrong?

Mr. LITTLETON. Yes; that follows.

Mr. HILL. And the indictment against Mr. Safford was wrong?

Mr. LITTLETON. Yes; in this particular: If they misconceived the jurisdiction of the Federal court and these people afterwards did actually commit some form of perjury, it was proper they should be indicted. While it was a misconception on the part of the Government to bring this in the Federal court, if these people did commit perjury or interfere with justice, they ought to be indicted. Of course, that is based on my position being correct.

Mr. HILL. My question was assuming your position was correct. Then, the indictment was also wrong against Mr. McCullagh?

Mr. LITTLETON. Yes, sir.

Mr. HILL. And the indictment against the Slade boys was also wrong?

Mr. LITTLETON. Yes, sir.

Mr. HILL. You are acquainted with the Slade boys, since you became their attorney?

Mr. LITTLETON. Yes.

Mr. HILL. What is your opinion of the boys as lawyers—professionally?

Mr. LITTLETON. As far as I have seen it, and from my observation, they have conducted themselves with propriety and they are indefatigable lawyers. I think they are good lawyers. I think they differ in respect to their abilities—I mean they differ between them—and as far as I know I have seen nothing about the Slades and know nothing about the Slades that is not in their favor unless these charges are taken to be true which are made in this indictment. That always injures a person's reputation. I inquired into the history of the Slade boys very fully from men from Hartford, Conn., about the time of going into the case. I wanted to know something of their background. I found they were boys who had assisted each other through college, having come from very lowly surroundings, and I thought deserved a great deal of credit for having achieved the measure of success they had, beginning at such a point of disadvantage. I remember of speaking to Judge Noyes, formerly of the Circuit Court of Appeals, who came from Connecticut, and asking about them about the time I went into their case. He knew them in Hartford and spoke well of them.

Mr. HILL. Are they graduates from any university?

Mr. LITTLETON. I believe they are all Yale men. My recollection of the story is unique. The two young ones worked to help Ben, the older one, to go through Yale. They were newsboys and their father sold newspapers. They worked until Ben went through college, and Ben got out and worked to put the other two through; I do not believe they completed their course, but Ben did. They sort of walked and tired, as we say, to get each other through college.

Mr. HILL. Was there anyone from the district attorney's office who ever requested you or asked you not to go into these cases?

Mr. LITTLETON. No, sir; nobody ever said anything about my going into the case. I brought up the subject with Mr. Osborne for the reason I told. In fact, Mr. Osborne said he was very glad I went into the cases and rather welcomed my going into them.

Mr. NELSON. Were you attorney for a gentleman named Bright?

Mr. LITTLETON. Yes, sir.

Mr. NELSON. He has been suggested as a witness. Can you give the committee any estimate of his character—his reliability as a witness?

Mr. LITTLETON. I consider Bright is a perfectly truthful man, Judge. I think he is very truthful and very reliable. He has been unfortunately locked in the Ludlow Street jail, until we got him out. I think he is rather obsessed with his subject, as a man 10 months in jail is apt to get. As far as Bright is concerned, I have never found him unreliable.

Mr. GARD. What was the charge?

Mr. LITTLETON. He was not locked up for a criminal offense, except so far as might be involved in an order for contempt of court. A judgment had been obtained for the return of 200 bonds which were in the hands of a Paris bank.

Mr. HILL. Paris, France?

Mr. LITTLETON. Yes; and because he did not deliver the bonds as directed by the judgment of the court, contempt proceedings were taken against him and he was adjudged to be in contempt for the failure to deliver the bonds.

Mr. NELSON. Who made the adjudication of the contempt?

Mr. LITTLETON. It was Judge Vernon M. Davis, before whom the contempt proceedings came, and by whom the order confining him in prison was made.

Mr. GARD. Did Mr. H. Snowden Marshall have anything to do with the case?

Mr. LITTLETON. No, sir; but there were several cases growing out of Bright's troubles. It is a very long story. There are several cases growing out of the matter——

Mr. GARD. You said he was committed by the State court for refusing to deliver the bonds. We are limited in our investigation to Mr. Marshall, and if Mr. Marshall had nothing to do with that, we are not concerned in it.

Mr. LITTLETON. I was only answering questions put to me.

Mr. GARD. I only wanted to know if Mr. Marshall had anything to do with his incarceration for contempt.

Mr. LITTLETON. No, sir; I ought to qualify that, because the question would be entirely remote, without saying that the firm of O'Gorman, Battle & Marshall, or Battle & Vandiver, appeared in the Federal court against Bright in the Federal court proceedings——

Mr. NELSON (interposing). The reason I asked is he has written to the committee, offering to come here and testify, and, of course, we do not care to ask him to come down unless we know that his character as a witness is all right.

Mr. LITTLETON. I think you may rely on his character implicitly. What he knows I do not know.

Mr. NELSON. What is the practice in the State courts of New York with reference to the use of the grand jury minutes in courts? Are they available for certain purposes?

Mr. LITTLETON. They are, but they have practically become unavailable except in the discretion of the court, as advised by the district attorney.

Mr. NELSON. When do they seem to be available in the discretion of the court—for what purpose?

Mr. LITTLETON. In case the defendant has never had an examining trial but has been indicted first hand, and in case he wishes to make a motion setting up the fact that his constitutional rights were invaded in the inquiry before the grand jury, there are decisions in the courts which have permitted and directed the turning over of the grand jury minutes, or a copy of them, to his counsel in order to enable him to set up these constitutional rights. Beyond that the courts have uniformly held that it is a matter of discretion and that discretion has been exercised largely against the disclosure of the contents of the minutes.

Mr. NELSON. Have you any cases in mind where this question has been settled by the State courts as to the rights——

Mr. LITTLETON. There is a case—I do not know that I could cite it offhand, but I could send it to you from my office, because I had it briefed—there was a case decided by Judge Kenifick, of Buffalo. He wrote a very long opinion, which was much cited afterwards, in which he sets forth the grounds on which, and under which, a defendant can be held to be entitled to an inspection of the grand-jury minutes.

Mr. NELSON. You say we can have that?

Mr. LITTLETON. I will send you the citation.

Mr. NELSON. What is the practice in the Federal courts with reference to the use of grand-jury minutes?

Mr. LITTLETON. I do not remember that there have been any grand-jury minutes furnished to defendants in any case that I recall.

Mr. HILL. That practice follows the State practice, does it not?

Mr. LITTLETON. Frequently.

Mr. NELSON. Is it not the rule?

Mr. LITTLETON. Very largely. Every other rule follows it.

Mr. NELSON. How do you account for the difference in this practice?

Mr. LITTLETON. I do not know. In the State courts some of the judges have been in the habit of allowing an inspection of the minutes. It was more liberally done a few years ago. It was once a rule that they would allow you to have them in order that the defendant might prepare for trial. It was finally cut down to the narrow scope which I have indicated as outlined in this opinion. You can not appeal from it, so it does not make any difference. You have simply got to try your client's case and take the whole judgment up. It does you no good. If he denies it to you it is practically over, because you have to try your case and then get it up. I do not know of any case in the Federal courts where they have written or decided anything regarding the inspection of the grand-jury minutes. In every case I have had I had nothing to do with the grand-jury minutes. I do not know that they keep the minutes the same in the Federal courts as in the State courts. I do not believe the stenographic service is the same.

Mr. CARLIN. The testimony in this case shows they do keep a stenographer present at all times, but there is no statutory authority as in the State courts.

Mr. LITTLETON. We had the statute amended, and I was a party to it, some years ago, which requires the stenographer in the State courts to take down everything as a chronicler of the events—take down everything, even what the judge has said not to take down. Frequently the judges would say, "Don't take that down," and go on with something. We had that amended. I do not believe that the stenographers in the Federal courts or grand juries have become fixtures of the legal machinery.

Mr. NELSON. Let me ask this question: This is a professional question. In the event of an investigation in this country in an impeachment case, which is a constitutional matter, the House being charged, or a committee of the House being charged, with the duty under the Constitution of investigating certain facts in reference to Members of Congress, that being a matter of high prerogative, do you know of any reason why the committee should not be permitted to inspect the grand-jury minutes?

Mr. LITTLETON. Of a past or pending case?

Mr. NELSON. Of a pending case.

Mr. LITTLETON. No; there can not be any reason at all, so far as I know, why any properly constituted agent of the Federal Government, or agency of the Federal Government, exercising a constitutional function and power, if the minutes which they seek to inspect are within the general scope of the investigation which they are making, I should think all Federal records and records of all Federal

courts and Federal functionaries would be available to the Federal constitutional body which had the constitutional power to do what they are doing.

Mr. NELSON. I ask you because you served in the House and are a well-known lawyer of standing. Do you know of any reason why, in a grand inquest of the Nation, the people's Representatives should not be permitted to know what the records are in the keeping of the judiciary or executive departments?

Mr. LITTLETON. I assume, Judge, the way it would work out in my mind—and this is certainly very much of a horseback opinion I am giving—but I would work it out this way: If this committee is proceeding to gather information and facts in the discharge of a constitutional duty, which may be necessary to be presented in a larger tribunal and larger forum for a larger inquiry, which is a constitutional inquiry, this committee would undoubtedly enjoy as much right to go into the records and inquire into the actions of the Federal functionaries in aid of this work as would the final forum to which it is going to report, because it is not able to do very much unless it could do that. Therefore I would assume that the House of Representatives in a given case, and I should assume the Senate in a given case, in which the House had presented articles of impeachment against a judge, for instance, either one of them acting within the constitutional functions, would be entitled to have any record which was necessary to discharge those constitutional functions. That is just off-hand, of course.

TESTIMONY OF MR. SAMUEL HERSHENSTEIN.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. GARD. You have given your name to the stenographer?

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. And you are an attorney at law?

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. How long have you been an attorney at law?

Mr. HERSHENSTEIN. Since October, 1911.

Mr. GARD. Were you admitted in the State of New York?

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. A graduate of a law school?

Mr. HERSHENSTEIN. Columbia Law School.

Mr. GARD. Are you a graduate of any college?

Mr. HERSHENSTEIN. I had one year special work at Columbia University.

Mr. GARD. What is your age, please, Mr. Hershenstein, now?

Mr. HERSHENSTEIN. Twenty-nine.

Mr. GARD. Twenty-nine?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. You were admitted when you were 25—admitted to the bar?

Mr. HERSHENSTEIN. No; it was five years ago; 24.

Mr. GARD. Twenty-four?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. How long have you been associated in the office of the United States district attorney?

Mr. HERSHENSTEIN. Since April, 1911—April, 1912.

Mr. GARD. You were admitted in what year?

Mr. HERSHENSTEIN. October, 1911.

Mr. GARD. October, 1911, and in April, 1912, you went into the office of the United States district attorney?

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. After you had been admitted to the bar, say, six months, is that correct?

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. What work did you have when you went in there? What work did you do?

Mr. HERSHENSTEIN. I first was a special clerk in the Bureau of Investigation; that is, the detective department of the Government service. I was employed to prepare, with Mr. Dorr and one other assistant United States attorney, the Sheftels and George Graham Rice case.

Mr. GARD. What case?

Mr. HERSHENSTEIN. Sheftels and George Graham Rice case.

Mr. GARD. Being unfamiliar with those cases, I will ask what they were; just briefly?

Mr. HERSHENSTEIN. It was a bucket-shop case; a scheme to defraud and a bucket-shop case.

Mr. GARD. Was your first employment clerical, or was it of an investigating character?

Mr. HERSHENSTEIN. It was of an investigating character.

Mr. GARD. Had you any previous experience as a detective, if I might use that term?

Mr. HERSHENSTEIN. I did not do any detective work.

Mr. GARD. What?

Mr. HERSHENSTEIN. I say, I did not do any detective work.

Mr. GARD. You mean before you went in?

Mr. HERSHENSTEIN. Before I went in where?

Mr. GARD. In the district attorney's office.

Mr. HERSHENSTEIN. I said I was employed in the Bureau of Investigation, which is commonly called the detective part of the Government service. If you wish a fuller answer, I can give it to you.

Mr. GARD. I am just seeking to know your employment; that is all.

Mr. HERSHENSTEIN. I examined witnesses and acted under the instructions of Mr. Wise and Mr. Dorr in the preparation of the Sheftels case for trial, but I was not an assistant United States attorney.

Mr. GARD. Was there any reason why you should be employed for this particular case, or did the cases just happen in there at the time you were employed?

Mr. HERSHENSTEIN. No; I had known Mr. Goldthwaite H. Dorr, who was first assistant United States attorney to Mr. Wise, at Columbia University Law School, and had several courses with him, and it was through him that I secured the appointment.

Mr. GARD. Your appointment was not, then, made for any personal reason of investigating this particular case?

Mr. HERSHENSTEIN. None whatever.

Mr. GARD. How long did you do that sort of work—investigating work?

Mr. HERSHENSTEIN. That was about four or five months, until the 'Sheftels' case ended with a plea of guilty, and then I was appointed an assistant United States attorney, and did the ordinary work of an assistant United States attorney.

Mr. GARD. Was that under Mr. Wise?

Mr. HERSHENSTEIN. Under Mr. Wise, and thereafter under Mr. H. Snowden Marshall.

Mr. GARD. But your original appointment was under Mr. Wise?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. Do you remember when Mr. Marshall came into office?

Mr. HERSHENSTEIN. Yes, sir. I think it was in March, three years ago; March, 1913, I think; March or April, 1913, is my recollection.

Mr. GARD. It was very shortly after the change in the administration?

Mr. HERSHENSTEIN. Yes; very shortly after.

Mr. GARD. What kind of work did you do when Mr. Marshall assumed the duties of the office of district attorney?

Mr. HERSHENSTEIN. I did trial and preparation work; prepared cases for trial, and tried cases, with and without the assistance of Mr. Wood, who is the first assistant in the office; the first assistant in the criminal division of the office.

Mr. GARD. Mr. Wood is the first assistant in the criminal division of the office?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. Do you have any rank at all in the office?

Mr. HERSHENSTEIN. No, sir. After Mr. Wood, we are all assistant United States attorneys.

Mr. GARD. Mr. Wood is the first assistant, and then the rank is that you are all known as assistant United States attorneys?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. Since Mr. Marshall has been in office, have you done special work in bankruptcy cases?

Mr. HERSHENSTEIN. For a time I had under my charge a great number of bankruptcy cases. I never did any special work in bankruptcy cases. I have always had a number of them, in conjunction with other work in the office.

Mr. GARD. What sort of other work have you done?

Mr. HERSHENSTEIN. Fraud cases, counterfeiting cases, naturalization cases, removal cases—removal from our district to other districts in the United States courts; that is about all, I think; opium cases, and, perhaps, some other kinds of cases.

Mr. GARD. Now, assuring you of the entire impartiality of the committee, and of the fact that we only want information—

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD (continuing). And that we have no grievance against you or any other man—

Mr. HERSHENSTEIN. Yes, sir. I am free to give you everything I know about every case I have ever had, or anything I have ever done.

Mr. GARD. I am very glad you take that attitude.

Mr. HERSHENSTEIN. Yes.

Mr. GARD. And the questions I will ask you will be largely matters upon which we seek information, which will be explanatory, if you care to make it. We have had evidence—notably, the evidence

of a man by the name of Rowley, superintendent of an office building, at 170 Broadway, New York, that you, in company with a Federal officer, sought to enter the private office of Mr. Simon Kugel, in his absence, for the purpose of examining some of his personal papers and effects. Would you care to explain that matter to us?

Mr. HERSHENSTEIN. Yes, sir. I wish to first state that that is an absolute, unequivocal falsehood—that statement. Now, if you wish to know the facts, I will give them to you.

Mr. GARD. I will be very glad to know them, I am sure.

Mr. HERSHENSTEIN. Mr. Kugel was charged with two bankrupts, of a conspiracy to conceal assets in bankruptcy. Mr. Kugel was the attorney for Rogal & Brass, the bankrupts. The case was in the hands of Mr. Osborne for trial. The case was thereafter turned over to me for further investigation, and I commenced that investigation. The Government secured evidence that there had been telephone calls made by the office of Simon H. Kugel to every point in which town or city the concealed merchandise had been found stored in warehouses under fake names. It was endeavoring to locate the original telephone slips, showing whether or not the person who called the office asked for Kugel or not, or asked for some one else, it being possible that the bankrupt, who was in constant consultation with his attorney, used the attorney's offices for improper purposes; and a day before a certain event happened, we had secured the original telephone slips from the New Haven Telephone Co., showing that on the exact day when the goods had been discovered by the detective hired by the creditors in a warehouse in New Haven, there had been a 17-minute call made from that place to the office of Simon H. Kugel, the telephone stations being 26 and 27, New York City. I subpoenaed the stenographers in the office of Simon H. Kugel to ascertain where the original telephone slips were which Kugel had received from the telephone company month by month and for which he had paid.

Mr. GARD. Those were two young girls?

Mr. HERSHENSTEIN. I do not know anything about it—yes; there were two young girls. I was not at the hearings, and do not know what happened there. They came down to my office, and both told me this statement of facts: That Kugel occupied one of seven rooms, all of which were called one suite; that Kugel did not lease the suite; that a man named Gridley was the man who leased the suite and paid the rent; that the original telephone slips came to Gridley, and not to Kugel, and the bills came to Gridley; that after the bills were received by Gridley he would make a charge for each tenant of the suite who had made telephone calls outside of New York, and they would thereafter pay him, Gridley, for those calls. They therefore said that it was Gridley in whose possession the Government should look for the original telephone slips or sheets, if they were then in existence. She told me Mr. Gridley did not come to the office very often, and, if I remember correctly, she gave me an address where I could locate Mr. Gridley. We tried that address, and we could not locate him. I called up the bureau of investigation, which is the department helping us in these cases and others, and there was assigned to the case Mr. Adams, a special agent of the department. I called up the superintendent of the building that same evening, after the girls had told me this story, and after I had been unable to

find Mr. Gridley at the address given to me, and talked to him over the phone; told him who I was, and asked him whether he knew where Gridley was. He said Mr. Gridley was an uncertain quantity; that he had had some difficulty with the building company; that he came very seldom to the office, and that he had the key for Mr. Gridley's office; and that Mr. Gridley was in such a position with the building company that if Mr. Gridley wanted to enter his office he had to come for the key to Mr. ———I forget this man's name—the superintendent.

Mr. GARD. Rowley? Is that the name?

Mr. HERSHENSTEIN. I do not know; it may be Mr. Rowley.

Mr. GARD. He gives his name as Robert Rowley.

Mr. HERSHENSTEIN. That is the man, I think, I spoke to.

Mr. GARD. The superintendent of 170 Broadway?

Mr. HERSHENSTEIN. That is the man I spoke to. I asked him whether he knew whether Mr. Gridley would come in that evening, and he said he did not know. I called up Mr. Adams then, and asked Mr. Adams would he go down to the building with a subpoena and serve Mr. Gridley with a subpoena calling for the production of the original telephone sheets, and which had been returned from the telephone company, covering the dates I wanted. It seems to have been the custom—and it is to-day—for two men in the bureau of investigation to go down on a job where a man is interviewed, or a man is spoken to, if it is important enough, and Mr. Gridley asked Mr. Offley, who was the chief in charge, whether he could have somebody else go with him, and I recall that there was no one else——

Mr. GARD. You say "Gridley asked Mr. Offley"?

Mr. HERSHENSTEIN. I meant Mr. Adams.

Mr. GARD. You do not mean that Mr. Gridley asked Mr. Offley?

Mr. HERSHENSTEIN. No. Mr. Offley told Mr. Adams, and Mr. Adams asked me if I would go along with him. I saw nothing improper in going there; I knew more about the evidence in the case than Mr. Adams, and it might have happened that Mr. Gridley was there and that I would know much better than he or Mr. Adams which slips were wanted. We went down there and we saw Mr. Rowley, and Mr. Rowley represented, in the presence of Mr. Adams—and the reports of the bureau of investigation will show this what I have here testified to—that he had the key for Gridley's room; that we came there for that purpose, and whether or not Mr. Gridley was there. He walked along with us to Mr. Gridley's room, which opened out into the corridor, and Mr. Gridley was not there. We asked him when we could see him; he said he did not know; and we arranged—or at least he promised me—that the next time Mr. Gridley came down he would let the office know, so that we could subpoena him. He did let the office know, and Gridley was subpoenaed; and Mr. Gridley came down and gave me a statement in which he said that he could not find or did not know where the original telephone slips were.

Mr. GARD. The statement is made under oath by Mr. Robert Rowley in this manner, speaking of Samuel Hershenstein, which is yourself: "He and another gentleman from the United States district attorney's office wished to get access to Mr. Kugel's office to search

for some papers or records, and I told him I could not let him in unless he had an order from the court—from the judge; that we were there to protect tenants' property, and not to do otherwise."

Mr. HERSHENSTEIN. That statement is absolutely untrue.

Mr. GARD. Out of the very lengthy explanation you have made, the gist of it is that you went along with this—

Mr. HERSHENSTEIN (interposing). Mr. Adams.

Mr. GARD (continuing). Mr. Adams, who was part of the investigating department—

Mr. HERSHENSTEIN (interposing). Yes.

Mr. GARD (continuing). With intent to serve process upon Mr. Gridley to produce these original telephone slips?

Mr. HERSHENSTEIN. And to see Mr. Gridley, if he was there at that time.

Mr. GARD. You knew that Kugel had a room there, did you not?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. And Kugel was the man you were trying?

Mr. HERSHENSTEIN. Kugel had been indicted; yes, sir.

Mr. GARD. You desired also to get information about him, did you not?

Mr. HERSHENSTEIN. The telephone slips would give us or not give us that information; yes, sir.

Mr. GARD. Did you not want other information about his personal affairs—about letters that he possibly may have written?

Mr. HERSHENSTEIN. Everything we could possibly get in a legal manner.

Mr. GARD. And do you not recall that you were trying also to do that, in addition to trying to get the telephone slips—that you wanted to get access to Mr. Kugel's files?

Mr. HERSHENSTEIN. I tell you that I did not; never had it in mind, and never would have done it, even if I had been told to do that sort of thing, and that it was not the purpose of my visit, and the man who went with me is at present still in the employ of the United States Government. I have my statements at the office, showing what those girls told me.

Mr. GARD. You were not told to go down there and break into a man's office, were you?

Mr. HERSHENSTEIN. No, sir.

Mr. GARD. I assume that you had no instruction of that kind.

Mr. HERSHENSTEIN. No, sir.

Mr. GARD. From any of your superiors in the office, did you?

Mr. HERSHENSTEIN. No, sir.

Mr. GARD. Did you return there at any other time?

Mr. HERSHENSTEIN. To the building?

Mr. GARD. Yes.

Mr. HERSHENSTEIN. Never.

Mr. GARD. When Mr. Gridley was served, as you say as the result of having been told by Mr. Rowley, did you again attend?

Mr. HERSHENSTEIN. No, sir. I never went down there, and Mr. Gridley came to my office and told me—before we actually served him we located some woman who knew Mr. Gridley, and we talked to her over the phone, and he was notified, in some way, that we wanted him, and then I had a conversation with him, and he told me that he did not have those records at the time I went down there,

and did not have them at the time he came to see me, and we never did get the original telephone records, which were supposedly in the possession of Mr. Gridley.

Mr. GARD. You never did get them?

Mr. HERSHENSTEIN. No, sir. May I add just one statement?

Mr. GARD. Surely.

Mr. HERSHENSTEIN. The reason why we were trying to get them from Mr. Gridley or from Mr. Kugel was that a subpoena had been served upon the telephone company, and the answer came back that they had been destroyed, because a certain period of time, during which they kept those records, had elapsed.

Mr. GARD. Now, there is another matter that I desire to call to your attention for explanation, if you desire to make it. There is the charge made in the evidence, at least in sworn testimony, concerning the indictments against a man by the name of Herman H. Oppenheimer. Oppenheimer has stated that there were seven indictments returned against him. There was some testimony that we had from Mr. Leary, the clerk, that that statement may have been erroneous. If you have any information to give us on that we would be very glad to hear it.

Mr. HERSHENSTEIN. Yes, sir; I have. Mr. Oppenheimer was indicted three times; at one time they returned two indictments identically alike, except that one defendant was added in one and not in the other. That was done for the purpose of not having to sever, if we were going to trial as we intended to, and we did not want to proceed against one Reuben Samuels, who was added to one indictment and not the other. To those indictments returned February 24, 1913, pleas in abatement were filed, and after some months Judge Thomas quashed them. A new indictment was returned and filed on November 23, 1914, there being returned one indictment against Herman H. Oppenheimer and others.

Mr. GARD. How many others?

Mr. HERSHENSTEIN. No; I mean in the one indictment he was named plus seven others.

Mr. GARD. Seven others?

Mr. HERSHENSTEIN. Just one indictment; six or seven others. One indictment was nolle prossed by the Government a few days after the return of the final indictment, on December 21, 1914.

Mr. GARD. What was the reason for the nolle of the second indictment you spoke about?

Mr. HERSHENSTEIN. There were raised two questions by the defendants in their pleadings; one was that the indictment was not good because of the presence of a grand jury stenographer; another point was that the indictment was not legally effective because that indictment was not voted on; that there had been a change in the indictment between two dates, one prior to the date when the indictment was finally returned. So the motion to quash—I mean to the special plea in bar—we entered a demurrer. For the purposes of the argument we admitted those facts and still claimed that the indictment was sufficient and should stand. Now, the office had been trying to try Oppenheimer for over a year; we wanted to eliminate every technical point that could be raised, and we saw no reason why we should not do that, there having been no trial, and

aiming

having been put in no jeopardy, by returning an indictment which would take away every possible flaw which they claimed at that time. A new indictment was returned and the result was that those points were not raised, but other points were raised for the first time. The point was raised that because Judge Thomas had dismissed the indictment, and the facts were the same and the transaction the same, that therefore, even though the rule of law had been subsequently changed by the Supreme Court of the United States, we could not indict him again, and we have not been able to this day to indict him again.

Mr. GARD. On the ground that he had once been placed in jeopardy?

Mr. HERSHENSTEIN. He did not claim that; he had never been in jeopardy; he had never been before a jury. I think you will agree with me that an indictment is not putting a defendant in jeopardy, and that question is now before the Supreme Court, the appeal papers having gone up last Monday.

Mr. GARD. I am interested in the second indictment. You say to the second indictment he entered a special plea in bar, which practically is or has the same practical force at least as a motion to quash?

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. At any rate, it seeks to get rid of the indictment?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. And you say that in that plea the grounds, as you recall them, were, first, that there was a stenographer present, and, second, that the indictment had not been voted on—this particular indictment—by the grand jury?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. And the Government—were you acting for the Government?

Mr. HERSHENSTEIN. No; Mr. Wood appeared in court in that case.

Mr. GARD. Mr. Wood?

Mr. HERSHENSTEIN. Mr. Wood argued the motions in this case.

Mr. GARD. He argued the motions?

Mr. HERSHENSTEIN. Yes.

Mr. GARD. But did you have the indictment in charge?

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. You filed a demurrer, which, in effect—which had the legal effect at least of admitting the truth of that which was contended in the special plea in bar, and then after the filing of the demurrer, there was no hearing by the court upon the demurrer, but subsequently the Government filed a nolle to that indictment, and then sought to perfect the arrangement for prosecution by filing a new indictment—a third indictment; is that correct?

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. The point that interests me, and the point that will perhaps interest the committee likewise, is in what you have just said to have been the substantial truth of the charge that here was an indictment returned against this man without a grand jury having voted on it.

Mr. HERSHENSTEIN. No; as I said, the charge was that there had been an indictment changed after it was filed with the court. That is as I understood it from people who talked to me, but if you will permit me I will give you exactly—

Mr. GARD (interposing). No; you have told me this: You have said that the ground of the special plea in bar was that the indictment had not been voted upon by a grand jury, and that a demurrer was filed to that, which has the legal effect of admission; that nothing was done upon the demurrer, no argument upon the demurrer, so that I would like to have you enlighten me as to whether or not that was the fact, that that grand jury had not voted on this indictment, as set up in the plea in bar?

Mr. HERSHENSTEIN. No; let me state this: That there was argument in court. Mr. Wood argued all the motions that were put before the court, and after the argument and before the decision the nolle proesse was entered. As we understood the point made in their plea, it was that there was no indictment voted on by the grand jury in that case. Now, may I just tell you exactly——

Mr. GARD. Was that true?

Mr. HERSHENSTEIN. No; it was not true; absolutely untrue; and if you will permit me, I will tell you the facts.

Mr. GARD. Certainly: that is what we want to know.

Mr. HERSHENSTEIN. Evidence had been submitted to the grand jury for a long period of time. On a Friday, November the some date—16th or 17th—a bill was voted by the grand jury. The procedure is in our office—and has been for years and years back—the district attorney then prepares a paper, and that paper, when it is filed, becomes an indictment, to which a man must plead. The grand jury brought down a paper, and an indictment was prepared by me for the office, submitted to the foreman, and was brought down to court at 1 o'clock on that date. The paper was turned over to Bill Leary, the clerk; he looked at it; he saw it had not been signed; he turned to the judge, and told the judge that the paper was not signed, and was not valid. The judge then said: "Mr. Foreman of the Grand Jury, this indictment is void; it is not signed. I return it to you or I return it to the district attorney"—I don't remember who took it, I or the foreman—"and file this paper at some future time." The indictment was not filed. It was not a court record, and the clerk's records will so show. Saturday the chief and I had a conversation. It was an important case in the office; he was a very prominent attorney; there was a lot of investigation for a month, and the chief held up finding an indictment against Oppenheimer.

Mr. GARD. Whom do you call the "chief"?

Mr. HERSHENSTEIN. Mr. H. Snowden Marshall; and he permitted me to get up a statement, which was given to Mr. Marshall, when Mr. Rose and Mr. Oppenheimer and I were there, and after all this deliberation Mr. Marshall decided that there was a case against Mr. Oppenheimer. We sat together, and we went over the grand jury testimony. Just before that grand jury proceeded, I had uncovered a new and important bit of evidence, concerning a note which had been turned over by the bankrupt to Oppenheimer before the failure, and for which Mr. Oppenheimer received the money—a check; I have the check here—after the failure; so that in our opinion the case was absolutely perfect, so far as assisting in the concealment of assets by Oppenheimer. Mr. Marshall said that the wording of my indictment did not suit him, and, if you will permit me, I want to show you what all this is about. I said "property and monies,"

and Mr. Marshall thought that because the note had actually been produced in evidence, and was commonly called a "chose in action"—he said, "Why not say so in the indictment?" and so he said to change that and have it read "monies and choses in action" and other property, and so forth. A new page was drawn for that, a new back was drawn, and on Monday, November 23, we changed—the evidence had not been before the court; it was not new evidence: it was evidence which had been produced before any evidence was submitted. That change was shown to the foreman, to the jurors, and no vote was necessary; there had not been a new indictment delivered in court; it was submitted to the grand jury, and the foreman voted upon that; and on Monday that paper first became an indictment by that grand jury. Now, pardon me one moment; before adopting that procedure, Mr. Wood and I and others talked to half a dozen of the assistants in the office, and it was understood, and the chief agreed—rather, Mr. Marshall agreed—that a new vote was not necessary, because, let me put a case to you: A vote is taken the second of the month; an indictment is not returned until three weeks after that; still, within that time the indictment can be changed half a dozen times—the paper—the form—until it contains what the office thinks is the gist of the evidence before the grand jury, so that there was only one indictment filed, and no indictment was ever changed after it was filed in court.

Mr. GARD. Let me call your attention to this distinction between your statement and what the evidence before us shows, so that you may explain that if you can and if you care to.

Mr. HERSHENSTEIN. Yes.

Mr. GARD. The oral evidence before us is that this indictment, in which you charge the "property and moneys" was not alone returned, but a copy of it was procured by Mr. Oppenheimer, and that after the copy of the indictment was procured, the form of the indictment was changed from the phrase "property and moneys" to "moneys and choses in action."

Mr. HERSHENSTEIN. Are you through?

Mr. GARD. Yes.

Mr. HERSHENSTEIN. Mr. Rose came in to see Mr. Marshall immediately after the grand jury had attempted to return its indictment on Friday, and he asked Mr. Marshall if he could have a copy of it. Mr. Marshall, in my presence, told Mr. Rose: "Well, the indictment is not filed. I can not give it to you." "Well, Mr. Marshall, let me have a copy of it." I mean, they knew each other. I have known Mr. Rose, and Mr. Marshall knew him—"there is no harm in giving you a copy of a paper which we thought would be returned on Monday" in exactly that same way. Now, it was not returned, and on Monday a new copy was handed to Mr. Oppenheimer or to Mr. Rose, although we are not supposed to. I mean it is not obligatory to do that. If a man requests a copy of an indictment, we give it to him—and he included that particular change. Now, it was also pointed out in the first indictment—the one that was attempted to be handed down on Friday—there was an overt act named, which went into the whole story of this note. There was not a new paper which contained new evidence; the evidence was entirely alike, except "money" which would ordinarily include a "chose in action." It is money. That was made differently; but that was submitted

to the grand jury, to the foreman, and to the body; and I know of no instance where such a thing has been done—and it has been done before—where a new vote was taken.

Mr. GARD. Your statement is that there was no vote on that, except what you have said to have been the vote of the foreman; you do not mean that the foreman has the right to vote an expression of the other members of the grand jury?

Mr. HERSHENSTEIN. No; I say that the grand-jury docket will contain the vote of an indictment against Oppenheimer, charging him with aiding and abetting in a conspiracy to conceal assets at some prior time, at an actual date, when the bill is returned.

Mr. GARD. I understand that; but you said a moment ago that when you brought this second or corrected indictment down, instead of having it voted on, you had the foreman vote on it.

Mr. HERSHENSTEIN. If I said that, that is wrong. I said I showed it to the foreman, and told the grand jurors about the change in the phraseology.

Mr. NELSON. You presented a paper that had interlineations in it?

Mr. HERSHENSTEIN. Oh, yes.

Mr. NELSON. You did not rewrite it?

Mr. HERSHENSTEIN. I do not recall whether—my recollection, if it is right, is that there was a new page.

Mr. NELSON. Are you sure about that?

Mr. HERSHENSTEIN. No; I am not. Either the old indictment was changed—

Mr. NELSON (interposing). As a matter of fact, you took the same paper with these changes in it, and told the grand jury that you had made these changes?

Mr. HERSHENSTEIN. Yes, sir.

Mr. NELSON. And nothing further was done?

Mr. HERSHENSTEIN. No, sir. You see it had not been signed Friday? Then the foreman signed it on Monday.

Mr. NELSON. That is what you meant by a "vote of the foreman?"

Mr. HERSHENSTEIN. Yes, sir; signed it, and it was brought to the court.

Mr. GARD. The statement was further made that one of these indictments was quashed by order of the court, because it was made to appear by evidence that the grand jury in your charge was taken down into the grand jury room, and an indictment returned in such an altogether incredibly short time that the court was convinced that there could have been no possible action of the grand jury, and therefore the indictment was quashed.

Mr. HERSHENSTEIN. That is an absolute, premeditated, and infamous falsehood, because it never happened. I have got copies of every indictment that was ever filed, and Mr. Leary will show you the dockets. You can call the judge—

Mr. GARD (interposing). We saw the dockets. We would be very glad if you would leave copies of the indictments.

Mr. HERSHENSTEIN. Yes, sir; I have them with me.

Mr. GARD. Have you copies, or the originals?

Mr. HERSHENSTEIN. I have those which you want for your information; every indictment that was ever returned. I have a copy of the nolle-pros, and the reasons therefor.

Mr. GARD. Have you copies of the pleadings?

Mr. HERSHENSTEIN. Yes, sir; I have a copy of the moving papers. Shall I submit each one in rotation, and have them marked?

Mr. GARD. Yes.

Mr. HERSHENSTEIN. I hand the stenographer a copy of the indictment returned against Oppenheimer and others on the 24th day of February, 1914.

EXHIBIT No. 34.—MARCH 24, 1916.

District Court of the United States of America for the Southern District of New York.

At a stated term of the District Court of the United States of America for the Southern District of New York, begun and held in the city of New York, within and for the district aforesaid, on the first Tuesday of February in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 24th day of February in the year of our Lord one thousand nine hundred and fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present that during the year nineteen hundred and twelve, and up to and including the fifth day of August, nineteen hundred and twelve, Jacques Samuels and Joseph Samuels, late of the city and county of New York, were engaged in business at No. 129 West Twentieth Street, in the city, county, and State of New York, as copartners, doing business under the firm name of Joseph Samuels & Company, as manufacturers and dealers in braids and embroideries, and kindred merchandise; that Jacques Samuels was and is a resident of the city and county of New York; that Joseph Samuels was and is a resident of the city and county of New York; that Abraham Samuels was and is a resident of the city and county of New York; that Ray Abraham was and is a resident of the city and county of New York; that Herman J. Dietz was and is a resident of the city and county of New York; that Isaac Anderson was and is a resident of the city and county of New York; that Charles Hepner was and is a resident of the city and county of New York; that Herman H. Oppenheimer was and is an attorney at law in the city of New York, with offices at 170 Broadway, city and county of New York; that on the fifteenth day of June, nineteen hundred and twelve, and continuously on all other days thereafter to and including the 24th day of February, in the year of our Lord one thousand nine hundred and fourteen, in the county of New York, southern district of New York, and within the jurisdiction of this court and under the circumstances aforesaid, the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, under the firm name of Joseph Samuels & Company, as aforesaid, and the said Abraham Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner, and Herman H. Oppenheimer then and there anticipated, contemplated, and planned that a petition in bankruptcy should thereafter be filed to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, adjudicated bankrupts under the bankruptcy laws of the United States; that thereafter, in the due course of the bankruptcy proceedings, a trustee for the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, should be duly appointed.

And the grand jurors aforesaid, on their oath aforesaid, do further present that on the fifth day of August, nineteen hundred and twelve, a petition in bankruptcy was duly filed in the United States District Court for the Southern District of New York to have the said Jacques Samuels and Joseph Samuels, doing business, as aforesaid, under the firm name of Joseph Samuels & Co., individually and as copartners, adjudicated bankrupts; that on the 5th day of August, nineteen hundred and twelve, Alexander S. Webb was duly appointed receiver of the assets and effects of the said copartnership of the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, and of the individual estates of said Jacques Samuels and Joseph Samuels, and on the sixth day of August, 1912, the said Alexander S. Webb duly qualified as

such; that on the 23d day of October the said Jacques Samuels and Joseph Samuels, doing business, as aforesaid, under the firm name of Joseph Samuels & Co., individually and as copartners, were adjudicated bankrupts by the said United States district court; that on the fourth day of November, nineteen hundred and twelve, Alexander S. Webb was duly appointed trustee of the assets and effects of the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., and of their individual estates, and the said Alexander S. Webb, on the thirteenth day of November, nineteen hundred and twelve, duly qualified as such.

And the grand jurors aforesaid, on their oath aforesaid, do further present that the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner, and Herman H. Oppenheimer, on the 15th day of June, 1912, and continuously on all other days thereafter to and including the 24th day of February, nineteen hundred and fourteen, in the county of New York, southern district of New York, and within the jurisdiction of this court and under the circumstances aforesaid, did willfully, knowingly, and unlawfully conspire together to commit an offense against the United States, that is to say, the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Ray Abrahams, Herman J. Dietz, Isaac Anderson, Charles Hepner, and Herman H. Oppenheimer, did willfully, knowingly, and unlawfully conspire and corruptly and fraudulently agree among themselves that they would knowingly and fraudulently, while the said Jacques Samuels and Joseph Samuels, individually and as copartners doing business, as aforesaid, under the firm name of Joseph Samuels & Co. should be bankrupts as aforesaid, conceal from said Alexander S. Webb, the trustee of the said estates in bankruptcy, certain properties and moneys, which would, in the due course of the administration of said estates in bankruptcy, belong to the said estates in bankruptcy, to wit, certain moneys which had theretofore been on deposit in banking institutions in the city of New York, to the credit of said Jacques Samuels and Joseph Samuels and of said copartnership, Joseph Samuels & Co., to an amount upwards of one thousand dollars (\$1,000.00), and property consisting of certain shares of stock of the Borough Apartment Company, a corporation existing and organized under the laws of the State of New York, which said certificates of stock had been issued by said Borough Apartment Company in the name of the said Jacques Samuels and said Joseph Samuels and were the property of said copartnership of Joseph Samuels & Company, the value of said certificates of stock being upwards of the sum of one thousand dollars (\$1,000.00), and other property, the kind, amount, and particular description of which, and the exact amount and value of which, is now to the grand jurors unknown.

And in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels and Abraham Samuels did on or about June 28th, nineteen hundred and twelve, in the county of New York, southern district of New York, make and cause to be made, false and fictitious entries in a certain book called "time-book" belonging and appertaining to the business of Joseph Samuels & Co., whereby it was made to appear that one William Erlich was employed by said copartnership on January 6, nineteen hundred and twelve, and continuously thereafter until May 6th, 1912, and had received from said copartnership for said services the sum of forty dollars (\$40.00) a week on January 6th, 1912, and continuously weekly thereafter up to and including May 6th, 1912, whereas, in truth and in fact, the said William Erlich was not employed by said copartnership until May 6th, 1912, and did not receive from said copartnership any sum or sums of money for services prior to said May 6th, 1912.

And further, in pursuance of and to effect the object of said conspiracy, said Jacques Samuels and said Joseph Samuels did, on or about June 20th, 1912, destroy a certain book of account belonging and appertaining to the business of said copartnership of Joseph Samuels & Co., called purchase ledger, and certain other books of account, the number and more particular description of which are now to the grand jurors unknown.

And further, in pursuance of and to effect the object of said conspiracy, the said Ray Abrahams did, on or about November 25th, 1912, receive from said Jacques Samuels a large sum of money, an amount in excess of one thousand dollars (\$1,000.00), the exact amount of which is now to the grand jurors unknown, the property of said copartnership of Joseph Samuels & Co., and which would, in the due course of the administration of said estates in bankruptcy,

become the property of the said estate in bankruptcy of the said copartnership of Joseph Samuels & Co., and did thereafter conceal the said moneys from said Alexander S. Webb, the trustee of the estate in bankruptcy of the said copartnership.

And further, in pursuance of and to extend the object of said conspiracy, the said Herman J. Dietz did, on or about June 28th, 1912, sign and deliver to said Jacques Samuels a certain promissory note, for the sum of forty-five hundred dollars (\$4,500.00), which said note was marked "Nonnegotiable," and was in words and figures as follows:

\$4500.00/100

NEW YORK, May 16, 1912.

Four months after date I promise to pay to Joseph Samuels & Co. forty-five hundred 00/100 dollars at the Columbia Bank, 407 Bway., N. Y.

Value received.

Nonnegotiable.

No. — Due Sept. 16.

H. J. DIETZ.

And further, in pursuance of and to effect the object of said conspiracy, the said Isaac Anderson did, on June 17th, 1912, write his endorsement upon the back of a certain check drawn by said Jacques Samuels in the name of Joseph Samuels & Co., upon the Second National Bank of the City of New York, to the order of "I. Anderson" in the amount of three thousand dollars (\$3,000.00), which said check and said endorsement on the back of said check are as follows:

[Face of check.]

JOSEPH SAMUELS & Co.

Braid and embroideries.

No. 17.

NEW YORK, June 17, 1912.

Pay to the order of I. Anderson \$3,000.00, three thousand 00/100 dollars.

To the Second National Bank of the City of New York.

JOS. SAMUELS & Co.

[Back of check.]

[Indorsements.]

I. ANDERSON.

JOS. SAMUELS & Co.

HARRY SIEGEL.

And further, in pursuance of and to effect the object of said conspiracy, the said Charles Hepner did, on July 25th, 1912, write his indorsement upon the back of a certain check drawn by the said Jacques Samuels in the name of Joseph Samuels & Co., upon the Pacific Bank in the City of New York, to the order of Charles Hepner in the amount of \$405.40, which said check and the indorsement upon the back of said check are as follows:

[Face of check.]

No. 160.

THE PACIFIC BANK,

NEW YORK, July 25, 1912.

Madison Avenue Branch—28th St.

Pay to the order of Charles Hepner four hundred & five 40/100 dollars \$405.40

JOS. SAMUELS & Co.

[Back of check.]

JOS. SAMUELS & Co.

CHARLES HEPNER.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 22nd, 1912, take from the funds of said copartnership of Joseph Samuels & Co., the sum of \$1,100.00, which said sum of money would, in the due course of the administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$1,100.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 26th, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$2,500.00, which said sum of money would, in the due administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$2,500.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy.

And further, in pursuance of and to effect the object of said conspiracy, the said Herman H. Oppenheimer, on July 29th, 1912, received the sum of one thousand dollars (\$1,000.00) from the said copartnership of Joseph Samuels & Company; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

H. SNOWDEN MARSHALL,
United States Attorney.

Mr. CARLIN. What became of that indictment?

Mr. HERSHENSTEIN. That indictment was dismissed upon the motion to quash, by Judge Thomas.

Mr. CARLIN. What was the ground of the motion?

Mr. HERSHENSTEIN. The ground of the motion was that the statute of limitations had run. There was a controversy for years in our—

Mr. CARLIN. That would be raised on a plea in bar, would it not? And not on a motion to quash?

Mr. HERSHENSTEIN. Peculiarly, it was raised on a motion to quash, and sustained. The next indictment filed was one of November 23, of which I hand the stenographer a copy.

EXHIBIT No. 35.—MARCH 24, 1916.

District Court of the United States of America for the Southern District of New York.

At a stated term of the District Court of the United States of America for the Southern District of New York, begun and held in the city of New York, within and for the district aforesaid, on the first Tuesday of November, in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 23rd day of November, in the year of our Lord one thousand nine hundred and fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present that during the year nineteen hundred and twelve, and up to and including the fifth day of August, nineteen hundred and twelve, Jacques Samuels and Joseph Samuels, late of the city and county of New York, were engaged in business at Number 129 West 20th Street, in the city, county, and State of New York, as copartners, doing business under the firm name of Joseph Samuels & Co., as manufacturers and dealers in braids and embroideries and kindred merchandise; that Jacques Samuels was and is a resident of the city and county of New York; that Joseph Samuels was and is a resident of the city and county of New York; that Abraham Samuels was and is a resident of the city and county of New York; that Herman J. Dietz was and is a resident of the city and county of New York; that Charles Hepner was and is a resident of the city and county of New York; that Herman H. Oppenheimer was and is an attorney at law in the city and county of New York, with offices at Number 170 Broadway, city and county of New York; and was the attorney for said Joseph Samuels & Co., individually and as a copartnership as aforesaid; that on the fifth day of June, nineteen hundred and twelve, in the county of New York, southern district of New York, and within the jurisdiction of this court, the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid, under the firm name of Joseph Samuels & Co., then and there anticipated, contemplated, and planned that a petition in bankruptcy should thereafter be filed to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, adjudicated bankrupts

under the bankruptcy laws of the United States; and that thereafter, in the due course of the bankruptcy proceedings, a trustee for the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, should be duly appointed.

And the grand jurors aforesaid, on their oath aforesaid, do further present that on the fifth day of August, nineteen hundred and twelve, a petition in bankruptcy was duly filed in the United States District Court for the Southern District of New York to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as copartners, adjudicated bankrupts; that on the fifth day of August, nineteen hundred and twelve, Alexander S. Webb was duly appointed receiver of the assets and effects of the said copartnership, doing business as aforesaid, and of the individual estates of said Jacques Samuels and Joseph Samuels, and on the sixth day of August, nineteen hundred and twelve, the said Alexander S. Webb duly qualified as such; that on the twenty-third day of October the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as copartners, were duly adjudicated bankrupts by the said United States district court; that on the fourth day of November, nineteen hundred and twelve, Alexander S. Webb was duly appointed trustee of the assets and effects of the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., and of their individual estates, and the said Alexander S. Webb, on the thirteenth day of November, nineteen hundred and twelve, duly qualified as such, and thereafter continued to act as such trustee up to and including the 23rd day of November, nineteen hundred and fourteen.

And the grand jurors aforesaid, on their oath aforesaid, do further present that the said Jacques Samuels and Joseph Samuels, on the fifteenth day of June, nineteen hundred and twelve, and continuously on all other days thereafter to and including the 23rd day of November, nineteen hundred and fourteen, in the county of New York, southern district of New York, and within the jurisdiction of this court and under the circumstances aforesaid, did willfully, knowingly, and unlawfully conspire together, and with the said Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer, and each of them, to commit an offense against the United States; that is to say, the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer did willfully, knowingly, and unlawfully conspire and corruptly and fraudulently agree among themselves that they would knowingly and fraudulently, while the said Jacques Samuels and Joseph Samuels, individually and as copartners, doing business as aforesaid under the firm name of Joseph Samuels & Co., should be bankrupts as aforesaid, conceal from the said trustee of the said estates in bankruptcy certain properties and moneys, which would, in the due course of the administration of said estates in bankruptcy belong to the said estates in bankruptcy, to wit, certain moneys on deposit in banking institutions in the city of New York to the credit of said Jacques Samuels and Joseph Samuels, and of the said copartnership Joseph Samuels & Co., to an amount upwards of one thousand dollars (\$1,000.00) and certain other moneys and choses in action which would thereafter become due from customers of the said copartnership for merchandise sold to said customers by said copartnership, and property consisting of certain shares of stock of the Borough Apartment Company, a corporation organized and existing under the laws of the State of New York, which said certificates of stock had been issued by the said Borough Apartment Co. in the name of the said Jacques Samuels and said Joseph Samuels, and were the property of said copartnership of Joseph Samuels & Co., the value of said certificates of stock being upwards of the sum of one thousand dollars (\$1,000.00), and other property, the kind, amount, and particular description of which, and the exact amount and value of which is now to the grand jurors unknown; and the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer did, beginning with the said fifteenth day of June, nineteen hundred and twelve, conceal the aforesaid money and property belonging to the said copartnership, and continued to conceal the same until the thirteenth day of November, nineteen hundred and twelve, when said Alexander S. Webb was appointed trustee as aforesaid, and since said thirteenth day of November, nineteen hundred and

twelve, did continue to conceal the same from said trustee up to and including the 23rd day of November, nineteen hundred and fourteen.

And in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels, Abraham Samuels, and Herman H. Oppenheimer, did on or about the twenty-eighth day of June, nineteen hundred and twelve, in the county of New York, southern district of New York, make and cause to be made, and counsel and advise the making of false and fictitious entries in a certain book called "time book" belonging and appertaining to the business of Joseph Samuels & Co., whereby it was made to appear that certain persons and employees, employed by said copartnership had received from said copartnership for their services more money than such persons and employees had actually received.

And further in pursuance of and to effect the object of said conspiracy, the said Abraham Samuels did, on or about the 28th day of June, 1912, in the county of New York, southern district of New York, write up and cause to be written up a certain book called "time book" belonging to and pertaining to the business of Joseph Samuels & Company, whereby it was made to appear by the recording of false and fictitious entries therein that certain persons and employees employed by the said copartnership had received from said copartnership for their services more money than such persons and employees had actually received.

And further in pursuance of and to effect the object of said conspiracy, said Jacques Samuels, said Joseph Samuels, and said Herman H. Oppenheimer did, on or about June 20, 1912, destroy and cause to be destroyed and counsel and advise the destruction of a certain book of account belonging and appertaining to the business of said copartnership of Joseph Samuels & Co., called "purchase ledger," and certain other books of account, the number and more particular description of which are now to the grand jurors unknown.

And further in pursuance of and to effect the object of said conspiracy, the said Herman J. Dietz, at the request and upon the advice of said Jacques Samuels and said Herman H. Oppenheimer, did, on or about June 28, 1912, sign and deliver to said Jacques Samuels a certain promissory note, for the sum of forty-five hundred dollars (\$4,500.00), which said note was marked "non-negotiable," and was in words and figures as follows:

\$4,500.00.

NEW YORK, May 16, 1912.

Four months after date I promise to pay to Joseph Samuels & Co. forty-five hundred 00/100 dollars at the Columbia Bank, 407 Bway., New York.

Value received.

Nonnegotiable.

No. —. Due September 16.

H. J. DIETZ.

for which promissory note no consideration was paid by said Joseph Samuels & Co., and was made and signed by said Herman J. Dietz for the purpose of making it to appear that the assets of the said estates in bankruptcy were greater than they actually were, as the said Jacques Samuels and the said Herman H. Oppenheimer well knew.

And further, in pursuance of and to effect the object of said conspiracy, the said Charles Hepner did, on July 25, 1912, write his indorsement upon the back of a certain check drawn by the said Jacques Samuels, in the name of Joseph Samuels & Co., upon the Pacific Bank in the city of New York, to the order of Charles Hepner, in the amount of \$405.40, which said check and the indorsement upon the back of said check are as follows:

[Face of check.]

No. 160.

NEW YORK, July 25, 1912.

THE PACIFIC BANK, Madison Avenue Branch—28th St.

Pay to the order of Charles Hepner four hundred & 40/100 dollars.

\$405.40.

JOS. SAMUELS & Co.

[Back of check.]

Jos. Samuels & Co.
Charles Hepner.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 22, 1912, take from the funds of said copartnership of Joseph Samuels & Co., the sum of \$1,100, which said sum of money would, in the due course of the administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership and did conceal and secrete the said sum of \$1,100.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy, and has since said 22nd day of July, 1912, continued to conceal said sum of money from said trustee, to and including the 23d day of November, 1914.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 26, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$2,500.00, which said sum of money would, in the due administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$2,500.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy, and has, since said 26th day of July, 1912, continued to conceal said sum of money from said trustee up to and including the 23d day of November, 1914.

And further, in pursuance of and to effect the object of said conspiracy, and in order to aid and assist the aid Jacques Samuels, Joseph Samuels, Abraham Samuels, Charles Hepner, Herman J. Dietz, and Herman H. Oppenheimer, in continuing the concealment from said trustee in bankruptcy, of the money and property belonging to the said estates in bankruptcy of the said Joseph Samuels & Co., so concealed from said trustee in bankruptcy, the said Herman H. Oppenheimer, in a bankruptcy proceeding instituted and pending in the United States District Court for the Southern District of New York, to have the said Jacques Samuels and one Benjamin Lesser, individually and as copartners, doing business under the firm name of Abrahams & Lesser, adjudged bankrupts under the bankruptcy laws of the United States, and of which copartnership the said Jacques Samuels was a member and principal owner, was examined before the said Macgrane Cox, Esquire, referee in bankruptcy, in support of an application made by the said Herman H. Oppenheimer for an allowance as the attorney for the said copartnership of Abrahams & Lesser and the said Jacques Samuels as a member of said copartnership; and the said Herman H. Oppenheimer did, then and there, on the 19th day of January, 1914, willfully and falsely testify, in substance and effect, that he had, since the latter part of July, 1912, and up to the said 19th day of January, 1914, received no money or property in said bankruptcy action so pending against Joseph Samuels & Co., individually and as a copartnership as aforesaid, as compensation for legal service, except that he, the said Herman H. Oppenheimer, had received an agreement to be paid compensation in addition to whatever allowance might be made to him by the court for such services out of the estates in bankruptcy of said Joseph Samuels & Co., individually and as a copartnership, as aforesaid, whereas, in truth and in fact, the said Herman H. Oppenheimer did, on or about the 1st day of September, 1912, receive from the said Jacques Samuels a promissory note in and for the sum of \$897.36, with interest, made by the Universal Textile Company, a customer of said Joseph Samuels & Co., dated July 20, 1912, payable two months after date, to the order of Joseph Samuels & Co., and did thereafter, on September 11, 1912, receive payment therefor in the sum of \$897.36, which said promissory note and its proceeds was the property of the said copartnership of Joseph Samuels & Co., and would, in the due administration of the said estates in bankruptcy, have belonged to the said estates in bankruptcy: against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§37 U. S. C. C. and §29b of the bankruptcy act.)

H. SNOWDEN MARSHALL,
U. S. Attorney.

(Filing on cover:) U. S. district court. The United States of America vs. Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer. Indictment. Conspiracy to conceal assets from trustee in bankruptcy. U. S. C. C. §37 and §29b, bankruptcy act. H. Snowden Marshall, U. S. attorney.

Mr. GARD. You say that raised the statute of limitations and was sustained?

Mr. HERSHENSTEIN. The first indictment; yes, sir.

Mr. GARD. Then, did the second indictment seek to evade the statute of limitations?

Mr. HERSHENSTEIN. Oh, no; the Supreme Court of the United States had, before this indictment was returned, held that the three-year rule applied, and not the one-year rule, which Judge Thomas held.

Mr. GARD. They reversed it?

Mr. HERSHENSTEIN. Yes; they reversed it; but to make it doubly sure we inserted an overt act in the following year. That indictment was filed, and a plea in abatement and a plea in bar, of which I hand you copies, were filed.

EXHIBIT No. 36.—MARCH 24, 1916.

United States District Court, Southern District of New York.

THE UNITED STATES OF AMERICA AGAINST JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS, HERMAN J. DIETZ, CHARLES HEPNER, AND HERMAN H. OPPENHEIMER.

MOTION TO QUASH ON BEHALF OF HERMAN H. OPPENHEIMER.

And now comes the defendant, Herman H. Oppenheimer, and moves this court to set aside the indictment filed in this case for the following reasons:

1. It appears from the records of this court that the indictment herein is barred by reason of the adjudication in re United States against the same parties who are defendants in this indictment, numbers 2461 and 2462.

2. The indictment is barred by the statute of limitations contained in section 29d of the bankruptcy law of 1898.

3. The indictment does not set forth facts sufficient to constitute a crime under the laws of the United States now in force.

4. That the facts set forth in the indictment are impossible, indefinite, and uncertain and do not inform the defendant sufficiently of the nature of the charge against him, as provided for by law.

5. The indictment does not charge an offense cognizable by this court or covered by the statutes of the United States of America.

6. That the grand jury never voted on the indictment which was pleaded to. The grand jury voted on an indictment on Friday, November 20th, 1914, in the forenoon thereof, and the same was not voted on thereafter. That at that time the words in the said indictment which now appear as "November 23, 1914," on pages 1, 3, 5, 7, and 8 thereof were November 20th, 1914," while when the indictment was finally handed to this court it contained in place of the words "November 20th, 1914," on the said pages, the words "November 23, 1914." The said words are material and important, and more particularly are alleged to be the dates to which the crime and the concealment alleged therein continued. That between the 20th day of November, 1914, at 1 p. m., the time at which or previous to which the said indictment was voted, and November 23d, 1914, at 1 p. m., the time at which the said indictment was handed to the court, no evidence of any character was presented to the grand jury in reference to the crime alleged in the indictment, and the indictment as finally handed to the court was never voted on by the said grand jury with the dates so altered in it, and there was no evidence given to the said grand jury to sustain the changing of the said dates. That the said indictment was changed in other material respects after it was voted on by the said grand jury between 1 p. m. November 20th, 1914, and 1 p. m. November 23, 1914, by the addition of other material allegations which were never voted on by the said grand jury, as follows: In paragraph 4 thereof the word "other" was inserted in the said indictment between the words "certain" and "monies," and after the word "monies" there was inserted as alleged the words "and choses in action," which are and were material allegations and were not voted on by the grand jury, and they received no evidence to sustain the putting in of the said words between the time that they voted on the indictment, November 20th, 1914, and the time it was handed to the court on November 23d, 1914.

Wherefore the said Herman H. Oppenheimer prays judgment of the said indictment whether the United States of America ought or can prosecute him

in the premises and that he may be discharged thereof without delay and the indictment quashed.

New York, December 7th, 1914.

KELLOGG & ROSE,
Attorneys for Defendant, Oppenheimer,
Office & P. O. Address 115 Broadway, Manhattan, New York City.

ABRAM J. ROSE, Esq.,
Of Counsel.

BENJAMIN SLADE, Esq.,
Of Counsel.

We hereby certify that the above plea is not interposed for delay, but should be sustained on the merits. Dated New York, December 7th, 1914.

KELLOGG & ROSE,
Attorneys for Defendant, Oppenheimer.

(Filing on cover:) United States District Court, Southern District of New York. United States of America *against* Jacques Samuels, Herman H. Oppenheimer, et al. Copy. Motion to Quash. Kellogg & Rose, attorneys for Herman H. Oppenheimer, 115 Broadway, Borough of Manhattan, New York City.

Mr. CARLIN. What was the ground of the plea in abatement?

Mr. HERSHENSTEIN. The plea in abatement was that the stenographer was present in the grand jury room, and that an indictment against Oppenheimer had never been voted on by the grand jury.

Mr. CARLIN. Did the court sustain that plea?

Mr. HERSHENSTEIN. No. Before final submission so that we could go to trial in case there was something to those points, we nolle prossed those indictments. I have gone into the whole thing, Mr. Carlin, and I will go over it again if you would like me to.

Mr. HILL. He said there was something to those points, and they nolle prossed it. He has not explained that yet.

Mr. CARLIN. I am trying to get at the specific contents of the plea in abatement, and as to whether the facts set up in the plea were admitted by the district attorney's office?

EXHIBIT No. 37.—MARCH 24, 1916.

District Court of the United States, Southern District of New York.

UNITED STATES *vs.* JACQUES SAMUELS, JOSEPH SAMUELS, ABRAHAM SAMUELS,
HERMAN J. DIETZ, CHARLES HEPNER, AND HERMAN H. OPPENHEIMER.

DEMURRER TO DEFENDANTS SPECIAL PLEA IN BAR.

Now comes the United States of America, by H. Snowden Marshall, United States attorney for the southern district of New York, and Roger B. Wood, and Samuel Hershenstein, assistant United States attorneys for the southern district of New York, and demurs to the defendant's, Herman H. Oppenheimer, special plea in bar to the indictment herein for the following reason, to wit, that the facts as set forth therein are insufficient in law to constitute a bar to the prosecution of the indictment herein.

Wherefore, the United States of America demands judgment that the special plea in bar of the defendant, Herman H. Oppenheimer, is insufficient in law and be overruled, and that the United States of America have such other and further relief as to the court may seem proper.

H. SNOWDEN MARSHALL,
U. S. Attorney.

ROGER B. WOOD,
SAMUEL HERSHENSTEIN,
Asst. U. S. Attorneys.

(Filing on cover:) U. S. District Court, Southern District of New York. The United States *versus* Jacques Samuels, Joseph Samuels, Abraham Samuels,

Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer. Demurrer to defendants' special plea in bar. H. Snowden Marshall, United States attorney, attorney for United States.

Mr. HERSHENSTEIN. There was a demurrer entered which, for the purposes of the argument, practically admitted the facts stated therein.

Mr. CARLIN. Then, the judgment of the court was entered on the demurrer?

Mr. HERSHENSTEIN. Oh, no. There was no judgment entered. Before an opinion—and everything that I have told this committee was placed before the court by Mr. Wood on the argument—but before an opinion, which was expected within three or four weeks, the judge being an out-of-town judge, and the anxiety of Mr. Marshall to push the case for trial, there was a new grand jury hearing and a new indictment returned.

Mr. CARLIN. I know, but let us get at this indictment now. The plea in abatement set up the fact that there had been no vote of the grand jury; that indictment had been subsequently returned without that necessary precaution being taken. Was that a fact or not?

Mr. HERSHENSTEIN. No. I explained that to Mr. Gard.

Mr. CARLIN. You had a nolle pros filed to the indictment?

Mr. HERSHENSTEIN. Yes.

Mr. CARLIN. And the court never had an opportunity to determine whether that was a fact or not?

Mr. HERSHENSTEIN. No; it did not. Shall I go on?

Mr. CARLIN. Yes.

Mr. HILL. Why was the nolle pros entered?

Mr. HERSHENSTEIN. The nolle pros was entered for this reason: For five years the question had been debated whether or not an indictment was valid where a stenographer, who was not an assistant district attorney, was present. There had been no affirmative upper court ruling on that point. The judge who threw out the old Oppenheimer case had decided against us—had thrown out an indictment because of the presence of a grand-jury stenographer five days before Mr. Marshall determined to start a new grand jury proceeding and secure a new indictment.

Mr. CARLIN. Right there, where do you get the authority for the presence of either a stenographer or a district attorney or an assistant district attorney in the grand jury room?

Mr. HERSHENSTEIN. It has been decided now. I mean there is now a court of appeals decision on that.

Mr. CARLIN. Yes; I want you to tell me about that. What has the court of appeals decided about that?

Mr. HERSHENSTEIN. The court of appeals has decided that when the stenographer takes his oath he is a special assistant United States attorney for that particular purpose. The court does not go behind that, and will consider him so, and therefore there was no one inside the grand jury room who did not have the right to be there. That was decided about six month ago.

Mr. CARLIN. The court has held that a stenographer is an assistant district attorney?

Mr. HERSHENSTEIN. Yes, sir.

Mr. NELSON. May I ask what court that was?

Mr. HERSHENSTEIN. It was Judge Sessions, in the famous Rockefeller case, and there has been one decision since then.

Mr. CARLIN. Has any court decided that the district attorney has a right in the grand jury room?

Mr. HERSHENSTEIN. Yes; there are four decisions on that point—that the district attorney or his assistants are entitled to be present.

Mr. CARLIN. Are you allowed to remain there during the deliberations of the grand jury?

Mr. HERSHENSTEIN. Only to withdraw from the room when a vote is taken, and that is done in every particular instance. A vote is never taken in the presence of a grand jury stenographer or an assistant United States attorney. I will proceed with this. A nolle pros was entered to the indictment of November 23, on December 22, 1914, a day after the final indictment on December 21 was filed. To that indictment there was interposed a motion to quash, and that motion to quash is now before the Supreme Court of the United States—I mean, Judge Pope, after 11 months of deliberation——

EXHIBIT No. 38.—MARCH 24, 1916.

District Court of the United States of America for the Southern District of New York.

At a stated term of the District Court of the United States of America for the Southern District of New York, begun and held in the city of New York, within and for the district aforesaid, on the first Tuesday of December in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 21st day of December in the year of our Lord one thousand nine hundred and fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The grand jurors of the United States of America, within and for the district aforesaid, on their oath present that during the year nineteen hundred and twelve, and up to and including the fifth day of August, nineteen hundred and twelve, Jacques Samuels and Joseph Samuels, late of the city and county of New York, were engaged in business at number 129 West 20th Street, in the city, county, and State of New York, as copartners, doing business under the firm name of Joseph Samuels & Co., as manufacturers and dealers in braids and embroideries and kindred merchandise; that Jacques Samuels was and is a resident of the city and county of New York; that Joseph Samuels was and is a resident of the city and county of New York; that Abraham Samuels was and is a resident of the city and county of New York; that Herman J. Dietz was and is a resident of the city and county of New York; that Charles Hepner was and is a resident of the city and county of New York; that Herman H. Oppenheimer was and is an attorney at law in the city and county of New York, with offices at number 170 Broadway, city and county of New York, and was the attorney for said Joseph Samuels & Co., individually and as a copartnership, as aforesaid; that on the fifteenth day of June, nineteen hundred and twelve, in the county of New York, southern district of New York, and within the jurisdiction of this court, the said Jacques Samuels and Joseph Samuels, copartners doing business as aforesaid under the firm name of Joseph Samuels & Co., then and there anticipated, contemplated, and planned that a petition in bankruptcy should thereafter be filed to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as a copartnership, should be duly appointed.

And the grand jurors aforesaid, on their oath aforesaid, do further present that on the fifth day of August, nineteen hundred and twelve, a petition in bankruptcy was duly filed in the United States District Court for the Southern

District of New York to have the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as copartners, adjudicated bankrupts; that on the fifth day of August, nineteen hundred and twelve, Alexander S. Webb was duly appointed receiver of the assets and effects of the said copartnership, doing business as aforesaid, and of the individual estates of said Jacques Samuels and Joseph Samuels, and on the sixth day of August, nineteen hundred and twelve, the said Alexander S. Webb duly qualified as such; that on the twenty-third day of October the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., individually and as copartners, were duly adjudicated bankrupts by the said United States district court; that on the fourth day of November, nineteen hundred and twelve, Alexander S. Webb was duly appointed trustee of the assets and effects of the estate in bankruptcy of the said Jacques Samuels and Joseph Samuels, doing business as aforesaid under the firm name of Joseph Samuels & Co., and of their individual estates, and the said Alexander S. Webb, on the thirteenth day of November, nineteen hundred and twelve, duly qualified as such and thereafter continued to act as such trustee up to and including the 21st day of December, nineteen hundred and fourteen.

And the grand jurors aforesaid, on their oath aforesaid, do further present that the said Jacques Samuels and Joseph Samuels, on the fifteenth day of June, nineteen hundred and twelve, and continuously on all other days thereafter to and including the 21st day of December, nineteen hundred and fourteen, in the county of New York, southern district of New York, and within the jurisdiction of this court and under the circumstances aforesaid, did wilfully, knowingly, and unlawfully conspire together and with the said Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer, and each of them, to commit an offense against the United States; that is to say, the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer did wilfully, knowingly, and unlawfully conspire and corruptly and fraudulently agree among themselves that they would, knowingly and fraudulently, while the said Jacques Samuels and Joseph Samuels, individually and as copartners doing business as aforesaid under the firm name of Joseph Samuels & Co., should be bankrupts as aforesaid, conceal from the said trustee of the said estates in bankruptcy certain properties and moneys which would, in the due course of the administration of said estates in bankruptcy, belong to the said estates in bankruptcy, to wit, certain moneys on deposit in banking institutions in the city of New York to the credit of said Jacques Samuels and Joseph Samuels, and of the said copartnership Joseph Samuels & Co., to an amount upwards of one thousand dollars (\$1,000.00) and certain other moneys in choses in action which would thereafter become due from customers of the said copartnership for merchandise sold to said customers by said copartnership, and property consisting of certain shares of stock of the Borough Apartment Company, a corporation organized and existing under the laws of the State of New York, which said certificates of stock had been issued by the said Borough Apartment Co. in the names of the said Jacques Samuels and said Joseph Samuels, and were the property of said copartnership of Joseph Samuels & Co., the value of said certificates of stock being upwards of the sum of one thousand dollars (\$1,000.00), and other property, the kind, amount, and particular description of which and the exact amount and value of which is now to the grand jurors unknown; and the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer did, beginning with the said fifteenth day of June, nineteen hundred and twelve, conceal the aforesaid money and property belonging to the said copartnership, and continued to conceal the same until the thirteenth day of November, nineteen hundred and twelve, when said Alexander S. Webb was appointed trustee as aforesaid, and since said thirteenth day of November, nineteen hundred and twelve, did continue to conceal the same from said trustee up to and including the 21st day of December, nineteen hundred and fourteen.

And in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels, Abraham Samuels, and Herman H. Oppenheimer did, on or about the twenty-eighth day of June, nineteen hundred and twelve, in the county of New York, southern district of New York, make and cause to be made and counsel and advise the making of false and fictitious entries in a certain book called "time book," belonging and appertaining to the business of Joseph Samuels & Co., whereby it was made to appear that certain persons

and employees, employed by said copartnership, had received from said copartnership for their services more money than such persons and employees had actually received.

And further in pursuance of and to effect the object of said conspiracy, the said Abraham Samuels did, on or about the 28th day of June, 1912, in the county of New York, southern district of New York, write up and cause to be written up a certain book called "time book" belonging to and pertaining to the business of Joseph Samuels & Company, whereby it was made to appear by the recording of false and fictitious entries therein that certain persons and employees employed by the said copartnership had received from said copartnership for their services more money than such persons and employees had actually received.

And further in pursuance of and to effect the object of said conspiracy said Jacques Samuels, said Joseph Samuels, and said Herman H. Oppenheimer did, on or about June 20, 1912, destroy and cause to be destroyed and counsel and advise the destruction of a certain book of account belonging and appertaining to the business of said copartnership of Joseph Samuels & Co., called "purchase ledger," and certain other books of account, the number and more particular description of which are now to the grand jurors unknown.

And further in pursuance of and to effect the object of said conspiracy the said Herman J. Dietz, at the request and upon the advice of said Jacques Samuels and said Herman H. Oppenheimer, did, on or about June 28, 1912, sign and deliver to said Jacques Samuels a certain promissory note for the sum of forty-five hundred dollars (\$4,500.00), which said note was marked "Nonnegotiable," and was in words and figures as follows:

\$4,500.00.

NEW YORK, May 16 1912.

Four months after date I promise to pay to Joseph Samuels & Co. forty-five hundred 00/100 dollars at the Columbia Bank, 407 Broadway, N. Y.

Value received.

Nonnegotiable.

No. —. Due Sept. 18.

H. J. DIETZ.

For which promissory note no consideration was paid by said Joseph Samuels & Co., and was made and signed by said Herman J. Dietz for the purpose of making it to appear that the assets of the said estates in bankruptcy were greater than they actually were, as the said Jacques Samuels and the said Herman H. Oppenheimer well knew.

And further in pursuance of and to effect the object of said conspiracy, the said Charles Hepner did, on July 25, 1912, write his indorsement upon the back of a certain check drawn by the said Jacques Samuels in the name of Joseph Samuels & Co., upon the Pacific Bank in the city of New York, to the order of Charles Hepner, in the amount of \$405.40, which said check and the indorsement upon the back of said check are as follows:

[Face of check.]

No. 180.

NEW YORK, July 25, 1912.

THE PACIFIC BANK,
Madison Avenue Branch, 28th St.

Pay to the order of Charles Hepner four hundred & five 40/100 dollars \$405.⁴⁰/₁₀₀.

JOS. SAMUELS & Co.

[Back of check.]

JOS. SAMUELS & Co.
CHARLES HEPNER.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 22, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$1,100.00, which said sum of money would, in the due course of the administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$1,100.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy, and has since said 22nd day of July, 1912, continued to conceal said sum of money from said trustee, to and including the 21st day of December, 1914.

And further, in pursuance of and to effect the object of said conspiracy, the said Jacques Samuels did, on July 26, 1912, take from the funds of said copartnership of Joseph Samuels & Co. the sum of \$2,500.00, which said sum of money would, in the due administration of said estates in bankruptcy, belong to the estate in bankruptcy of the said copartnership, and did conceal and secrete the said sum of \$2,500.00 from said Alexander S. Webb, the trustee of said estate in bankruptcy, and has, since said 26th day of July, 1912, continued to conceal said sum of money from said trustee, up to and including the 21st day of December, 1914.

And further, in pursuance of and to effect the object of said conspiracy, and in order to aid and assist the said Jacques Samuels, Joseph Samuels, Abraham Samuels, Charles Hepner, Herman J. Dietz, and Herman H. Oppenheimer in continuing the concealment from said trustee in bankruptcy of the money and property belonging to the said estates in bankruptcy of the said Joseph Samuels & Co., so concealed from said trustee in bankruptcy, the said Herman H. Oppenheimer, in a bankruptcy proceeding instituted and pending in the United States District Court for the Southern District of New York, to have the said Jacques Samuels and one Benjamin Lesser, individually and as copartners, doing business under the firm name of Abrahams & Lesser, adjudged bankrupts under the bankruptcy laws of the United States, and of which copartnership the said Jacques Samuels was a member and principal owner, was examined before the said Macgrane Coxe, Esquire, referee in bankruptcy, in support of an application made by the said Herman H. Oppenheimer, for an allowance as the attorney for the said copartnership of Abrahams & Lesser and the said Jacques Samuels as a member of said copartnership; and the said Herman H. Oppenheimer did, then and there, on the 19th day of January, 1914, willfully and falsely testify, in substance and effect, that he had, since the latter part of July, 1912, and up to the said 19th day of January, 1914, received no money or property in said bankruptcy action so pending against Joseph Samuels & Co., individually and as a copartnership as aforesaid, as compensation for legal services, except that he, the said Herman H. Oppenheimer, had received an agreement to be paid compensation in addition to whatever allowance might be made to him by the court for such services out of the estates in bankruptcy of said Joseph Samuels & Co., individually and as a copartnership as aforesaid, whereas, in truth and in fact, the said Herman H. Oppenheimer did, on or about the 1st day of September, 1912, receive from the said Jacques Samuels a promissory note in and for the sum of \$897.36, with interest, made by the Universal Textile Company, a customer of said Joseph Samuels & Co., dated July 20, 1912, payable two months after date to the order of Joseph Samuels & Co., and did thereafter, on September 11, 1912, receive payment therefor in the sum of \$897.36, which said promissory note and its proceeds was the property of the said copartnership of Joseph Samuels & Co., and would, in the due administration of the said estates in bankruptcy, have belonged to the said estates in bankruptcy; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided. (§37 U. S. C. C. and §29b of the bankruptcy act.)

R. SNOWDEN MARSHALL,
U. S. Attorney.

(Filing on cover:) U. S. district court. The United States of America vs. Jacques Samuels, Joseph Samuels, Abraham Samuels, Herman J. Dietz, Charles Hepner, and Herman H. Oppenheimer. Indictment. Conspiracy to conceal assets from trustee in bankruptcy. U. S. C. C. §37 and §29b bankruptcy act. H. Snowden Marshall, U. S. Attorney.

[Copy from U. S. attorney.]

Mr. CARLIN (interposing). How many indictments were found against Oppenheimer?

Mr. HERSHENSTEIN. Three; and at one time two were returned, both identical, except for one more defendant in one and not in the other one.

Mr. CARLIN. That makes four?

Mr. HERSHENSTEIN. Four separate indictments at three separate times. Please remember, gentlemen, that the motion to quash the -November 23 indictment was not decided until 11 months after, and

that is a very few weeks ago, and then we immediately took an appeal, and we have not been able to try the case for that reason, and if you gentlemen want any evidence of Mr. Oppenheimer's guilt—if you want any, I have it here with me.

Mr. CARLIN. You mean the evidence taken before the grand jury? Is that the evidence you refer to as having here?

Mr. HERSHENSTEIN. I want just to make myself clear. I have been instructed not to disclose the grand jury evidence, but there has been—outside of grand jury proceedings, I have taken statements for a year and a half and I have examined witnesses. That I do not consider within the same proviso, so if you gentlemen want any evidence concerning Oppenheimer, or Kugel, or anybody else I know about, outside of the grand jury minutes, or grand jury proceedings, I am here to give it to you.

Mr. GARD. We do not want to pass on the guilt of Kugel or Oppenheimer or anybody else. We are not here for that purpose.

Mr. NELSON. You stated you had tried a number of bankruptcy cases or had charge of the same?

Mr. HERSHENSTEIN. Yes, sir.

Mr. NELSON. How many in the last year?

Mr. HERSHENSTEIN. I have with me here a statement showing every bankruptcy case in the office between the years 1905 and the present date. This statement shows about 60 or 70 cases since Mr. Marshall took the office, or about 10 times as many as during the whole preceding 15 years. Of those 70, I have had either partial or complete charge of about 25 or 30, and I can give you each one in detail, what happened.

Mr. NELSON. How many convictions?

Mr. HERSHENSTEIN. All. Every man I tried was convicted, except two people. One was George Lippman and the other Aaron Feldman, in the Kugel case. And may I point this out, gentlemen, that, so far as the Oppenheimer case was concerned, Herman J. Dietz was a defendant in that case. He had also been indicted on a smuggling charge, although he was connected with the bankruptcy failure, and he is the only one of the crowd whom we have tried and convicted since then—since this Oppenheimer case started. The bankrupt, Jack Samuels, has pleaded guilty, but because of the holding up of these pleas he can not be sentenced, and a juror who tampered with witnesses in the Dietz case, which is part of the Oppenheimer case, has been convicted also.

Mr. NELSON. What has become of the clients of Mr. Kugel?

Mr. HERSHENSTEIN. Of his what?

Mr. NELSON. Of Mr. Kugel's clients?

Mr. HERSHENSTEIN. They went to jail for 30 days apiece; pleaded guilty and went to jail.

Mr. GARD. They were informers?

Mr. HERSHENSTEIN. They were; yes; but they were the bankrupts, and also had been indicted.

Mr. NELSON. Did they go to jail or were they just placed in the custody of the marshal?

Mr. HERSHENSTEIN. So far as I know, on my oath, they went to the Tombs and stayed there.

Mr. NELSON. Did you ever consult them there? Have you any personal knowledge of that?

Mr. HERSHENSTEIN. Absolutely not.

Mr. NELSON. There is some testimony of a gentleman who visited you a score of times. Can you help me with the name?

Mr. HERSHENSTEIN. Yes; I can. His name is either Goodman or Feldman. Goodman, do you mean?

Mr. NELSON. You called him how many times before you? Twenty or twenty-four times?

Mr. HERSHENSTEIN. I will not attempt to state how many times.

Mr. NELSON. How do you justify that?

Mr. HERSHENSTEIN. I am here to justify that.

Mr. NELSON. How do you explain it, I meant to say? Pardon me for the word "justify."

Mr. HERSHENSTEIN. Yes, sir. Mr. Goodman was an expressman, with offices in New York and Bayonne. Mr. Kugel had relatives in Bayonne. Mr. Feldman originally came from Bayonne; that was this brother-in-law who lived in New Haven and who actually carted these goods around to fake storehouses. We were trying to find the receipts showing what Goodman did with those goods. We could not locate the warehouses. Two special agents went down to see him once, and then again, and he said he did not have any receipts. Finally I located a warehouse—the Standard Storage Warehouse—uptown, and they produced before the grand jury original receipts from Goodman showing Goodman had carted that merchandise. I subpoenaed Goodman, and after much parley he produced those receipts. "Mr. Goodman, did you have anything to do with carting the goods to Philadelphia?" "No, sir." "Were you ever there?" "No, sir." "You had nothing to do with putting the goods in a certain warehouse under a fake name?" "No, sir." "Sure?" "No, sir." And before the grand jury the same statements. Then we subpoenaed two gentlemen from the railroad company—

Mr. NELSON (interposing). You are giving me a lot of history, but why did you call this particular person before you so many times?

Mr. HERSHENSTEIN. I am going to show you that every time we call him he lied, and we got new evidence, and we called him again, and he lied again, and we got new evidence again, and he lied again.

Mr. NELSON. Every time you got new evidence you called him again?

Mr. HERSHENSTEIN. Certainly.

Mr. NELSON. Did you do that 24 times?

Mr. HERSHENSTEIN. No, sir.

Mr. CARLIN. What did you want with his evidence if you found him such a liar?

Mr. HERSHENSTEIN. I wanted, if possible, to have him tell the truth about whether or not he had delivered goods from one warehouse to another or taken them from one warehouse to another, because evidence of some one to identify Goodman was not as strong as Goodman's own story, and we had the testimony of two men from the railroad company in Philadelphia, who identified both at the trial and in the office absolutely Goodman as the one of the men who had been there and assisted in carting the goods from one place to another.

Mr. CARLIN. You say you had found this man to be a liar?

Mr. HERSHENSTEIN. Yes, sir.

Mr. CARLIN. Time and time again?

Mr. HERSHENSTEIN. Yes.

Mr. CARLIN. Now, after having found that, was it your purpose that he should be used to testify to some fact that you wanted to prove? Was it your purpose to tender him as a witness to any court?

Mr. HERSHENSTEIN. Well, I think—no; let me answer your question by another one. Mr. Rogal and Brass were the bankrupts; they had committed a crime and had lied, but still we tendered them as witnesses. We have to produce the witnesses we can—the best evidence we can. Because a witness happens to lie, because he is scared, or because he is bought off in our office, that does not say that when he finally determines to tell the truth that he can not be called. He was a clever fellow, and he knew what was going on.

Mr. CARLIN. You know that when you tender a witness the rule of evidence is that you vouch for his testimony. You can not impeach your own witness.

Mr. HERSHENSTEIN. Yes; we vouched for the testimony he gave; and when he had had two persons who absolutely identified him as being the person who carted the goods, or had something to do with it, we did vouch for the sort of testimony that he gave.

Mr. NELSON. Why did you want him to admit it, when you had testimony continually from other people? I think you said you would find new testimony, and then you would call him again, and he would lie again, and then you would find more new testimony, and you would call him again, and he would again lie?

Mr. HERSHENSTEIN. He was not called, altogether, more than six or seven times, to my knowledge.

Mr. NELSON. Will you positively swear that he was not called more than six or seven times?

Mr. HERSHENSTEIN. I will swear that Mr. Goodman was not in my office more than six—than eight times, at the most. That every time he was there—

Mr. NELSON (interposing). He may have been before Mr. Wood on other occasions?

Mr. HERSHENSTEIN. He saw Mr. Wood on some occasions, and I will say this, that every time he was there a special agent was with me, and his report, if he has one, will show how many times he was there. May I make this statement?

Mr. NELSON. Certainly.

Mr. HERSHENSTEIN (continuing). Which you gentlemen do not know about. Mr. Goodman is a personal friend of every relative of Mr. Kugel's; he has known Mr. Kugel for years and years; and he knows every one of the family; he knew the importance of his testimony, and he knew we did not have any definite, specific evidence of his connection with it other than the identification of these two persons, and here is one more reason why—

Mr. NELSON (interposing). What has that got to do with it—that he was a friend of every member of the family? I do not see the point.

Mr. HERSHENSTEIN. I say now that Mr. Goodman lied before the grand jury—

Mr. NELSON (interposing). No. Keep to the point.

Mr. HERSHENSTEIN. Yes, sir.

Mr. NELSON. You have stated that we did not know that he was a friend of every relative of the Kugel family. Now, what is the point of that?

Mr. HERSHENSTEIN. The point to that is that his——

Mr. NELSON (interposing). Is not this the point that you had in mind, that you thought he being so close to the family would have knowledge of the family transactions?

Mr. HERSHENSTEIN. Yes; certainly; and he knew that his connections in Philadelphia, if properly established, would convict him of a crime, or would implicate him in a crime.

Mr. NELSON. What about the preacher or rabbi in Philadelphia? Why was he brought to this trial about a wedding or something?

Mr. HERSHENSTEIN. I remember it distinctly.

Mr. NELSON. How do you account for that?

Mr. HERSHENSTEIN. I will tell you the story of that. No; I will give it to you in a few words. Mr. Kugel asked us to allow him to make a statement to the office before he was indicted. Mr. Abel I. Smith came down with him and for one or two days he was given an opportunity of making a statement to the office. He made that statement, and there was evidence that a check had been cashed for \$750 the day before the failure, indorsed "Kugel & Saxe," a partner of Mr. Kugel's. We asked Mr. Kugel, "Did you indorse that check?" And he answered, "No." Then we asked him, "Where were you just before the failure?" And he says, "I was to a wedding in Philadelphia—to the marriage of a certain person—and here is the man who will know that," and he gave us the rabbi's name and he was subpoenaed to verify that statement, and it did happen that he was in Philadelphia that day, so therefore we were convinced that Mr. Kugel had not indorsed that check.

Mr. NELSON. You also subpoenaed Mr. Kugel's father, we are informed?

Mr. HERSHENSTEIN. Yes, sir.

Mr. NELSON. When he was on a sick bed and when you were told that he had no testimony to give you and you had no knowledge of any testimony that he could give you, and that he subsequently died, largely from the effects of being called to New York under those distressing circumstances. How do you account for that?

Mr. HERSHENSTEIN. Are you Mr. Nelson?

Mr. NELSON. Yes.

Mr. HERSHENSTEIN. I want to know who I am talking to. Mr. Nelson, Kugel's father, lived in New Haven, in the city where the brother-in-law and the uncle and the fellow Leah, a relative of Mr. Kugel, operated in the distribution of this merchandise in the warehouses. We had a right to suspect, if we thought that Kugel was implicated in that case, that the father-in-law or the father, living in the same town, seeing the people every day, knew something about it. We also had traced certain telephone calls to a friend of Kugel's, a man by the name of Kasden, I think, in the same house, or the adjoining house, where the father lived. I pledge you my word of honor that I did not know or I do not know now that the father was ill or was very ill. I do not recall whether I knew he was ill, but I do say he was treated with the utmost courtesy. In the presence of Mr. Wood and myself and one or two other people he

appeared, and after certain questioning he was allowed to depart and return. I do not think he died from that sort of treatment.

Mr. NELSON. I am just giving you what is in the testimony. I would like to hear your explanation of it. That is all. You also summoned a Mr. Cohen?

Mr. HERSHENSTEIN. Yes.

Mr. NELSON. And he brought certain notes which were material, and you tore them up or threw them away?

Mr. HERSHENSTEIN. I have got the absolute proof of Mr. Cohen's absolute perjury with me.

Mr. CARLIN. Did you indict him?

Mr. HERSHENSTEIN. No. I say I have evidence before you that Mr. Cohen committed willful perjury before us, and also at the trial, but you know perjury must be proven.

Mr. NELSON. You do not mean before this committee?

Mr. HERSHENSTEIN. No; I mean before the committee that heard his testimony.

Mr. GARD. What committee do you mean?

Mr. HERSHENSTEIN. I mean your committee when you heard Mr. Cohen in New York City.

Mr. CARLIN. Before you get away from that, you say he lied before the grand jury, too, did you not?

Mr. HERSHENSTEIN. Yes.

Mr. CARLIN. Has he been indicted for perjury?

Mr. HERSHENSTEIN. He has not.

Mr. CARLIN. Why not?

Mr. HERSHENSTEIN. Because Mr. Wood and Mr. Marshall did not consider there was sufficient evidence to convict him, if he was ever tried, and we try not to indict anybody—to my knowledge, we try not to indict a person who can not be convicted.

Mr. CARLIN. You mean your associates do not think they could establish that he lied?

Mr. HERSHENSTEIN. That is right.

Mr. HILL. Did you indict him for conspiracy?

Mr. HERSHENSTEIN. For what?

Mr. GARD. Do not interrupt until the witness has had a chance to finish.

Mr. HERSHENSTEIN. Now, may I ask the committee if I am right in my statement that Mr. Cohen testified, as I am informed—

Mr. NELSON (interposing). Answer my question.

Mr. HERSHENSTEIN. I will.

Mr. NELSON. Just explain what the transaction was. There is testimony that he had taken notes, and that they would refresh his memory; that they were subsequently material in the case, and you summarily tore them up and said you had no use for them. Tell us the facts in regard to that.

Mr. HERSHENSTEIN. The history of the transaction is as follows: There came before us evidence that a man named Cohen had been instrumental in hiring Feldman, or having Feldman, the brother-in-law of Kugel, dispose of the merchandise. I did not know which Cohen it was. We found out from the trustee that he had an original letter from a Mr. Abner I. or A. I. Cohen from Boston. I subpoenaed Mr. Cohen to ascertain what he knew about the facts, or if he knew anything about the case. Mr. Cohen called me up on

the telephone, and we had a five-minute chat on the phone, and he said to me, "As an attorney I don't think I am privileged to divulge what Mrs. Goldstein and what Mrs. Rogal, the wife of the bankrupt, told me, without securing a release from them." I said, "Just give me a summary of the conversation, and I pledge you that before I use that testimony, if at all, we will get that release for you." He gave me the substance of the testimony—

Mr. NELSON (interposing). Did you want to know it before he got the release from the privilege?

Mr. HERSHENSTEIN. Yes; I did that. It was understood, as man to man, as attorney to attorney, that until we were to use it in court I was to be bound by the privilege and not to do that unless I got a release. He says, "Do you want me to come down?" I says, "No; not until you are called." He had been subpoenaed, you see, to attend. Then one afternoon Mr. Cohen walks in. "Mr. Hershenstein, I have just gotten married; I am in New York City. I came in to discuss this case with you." I talked with him, and he said—talked to me about the case, and I don't remember whether at that time or at some future time he gave me a copy of the letter, the original of which Mr. Ansorge had turned over to our office. Before he goes away he wants witness fees. I says, "Yes; I thought I was through with you. You did not come under my instructions." To make this short, we had an argument about the witness fees, and I would not pay him for only one way, instead of two ways, and he went away angry. He was terribly sore on me, in front of half a dozen people out in the hall. Some time after we wrote him a letter; and if you will pardon me, gentlemen, I want to go into this in this way so you can have in mind all the facts.

Mr. CARLIN. Have you seen Mr. Cohen's testimony?

Mr. HERSHENSTEIN. No; I have not. I have the testimony at the trials. We sent him a letter, dated March 7, in which we asked him to give us a summary of the evidence again in a statement form. We say to him, "Some months ago you saw my assistant, Mr. Hershenstein, and made to him a verbal statement what your knowledge about these matters was. So I may be able to decide whether it is necessary to call you, may I request you to give me a statement of the information?" March 12, 1914, he writes a letter, in which he says: "As far as sending you a statement as to what occurred, will say I feel that I can not do that in this case, because, being an attorney at law, the conversations I had with Mrs. Rogal and Mrs. Goldstein were, as you know, privileged, and I do not wish to jeopardize the rights of either party." That was three months after he was supposed to have given me those notes, and I tore them up.

Mr. CARLIN. Did he give you any notes?

Mr. HERSHENSTEIN. Absolutely not. I deny that he ever gave me any notes whatsoever; and if you will permit me and allow me, I will show you how impossible that story is, in view of the subsequent correspondence here.

Mr. NELSON. I do not want a demonstration of the evidence. I want your own statement.

Mr. HERSHENSTEIN. Absolutely never received those notes, and I never tore them up, because he was my witness, and that would have been the best thing for me and for the office to let the jury know that his recollection was true and not false. I called him as a witness;

not they. He told me he had them, and he wrote me four months after this occurrence that he had those notes in his files. This was a letter dated after we sent him a release by the two witnesses, when he wrote on March 21.

Mr. CARLIN. Mr. Hershenstein, what happened in that particular case at the trial.

Mr. HERSHENSTEIN. There were two trials. Mr. Wood tried both cases, and there were disagreements in both cases. The two bankrupts then went to jail for a month each, and we nolle prossed the indictment against Mr. Kugel, and I have a copy of the nolle pross here.

EXHIBIT No. 39—MARCH 24, 1916.

United States District Court, Southern District of New York.

UNITED STATES OF AMERICA v. SIMON H. KUGEL ET AL.

NOLLE PROSEQUI.

The defendants, Simon H. Kugel and Harry Rogal, David Brass, and Aaron Feldman, were jointly indicted for conspiring to conceal assets from their trustee in bankruptcy.

Rogal and Brass, who were the bankrupts, pleaded guilty and are awaiting sentence. Aaron Feldman and Simon H. Kugel were tried in April, 1914, at the conclusion of which trial Feldman was acquitted, but the jury disagreed as to Kugel. Kugel was retried in December, 1914, and the jury again disagreed.

The evidence against Kugel was largely circumstantial in character, and while I am absolutely convinced that the defendant Kugel committed the crime charged, that is, of assisting in the concealment of merchandise by the bankrupts from their trustee in bankruptcy, I am also convinced that the ordinary juror will not appreciate the force of the circumstantial evidence, and will not convict because the principal witness for the Government has entered a plea of guilty to an indictment for perjury.

Under these circumstances and for the above reasons, I recommend that a nolle prosequi be entered herein.

Dated: New York, Mar. 5, 1915.

Assistant U. S. Attorney.

I am acquainted with all the facts in this case, and I also state that I am absolutely convinced of the guilt of the defendant Simon H. Kugel of the charge in the indictment; but I also agree with Mr. Hershenstein that since the case is largely circumstantial in character, a conviction can not be secured. I, therefore, also recommended that a nolle prosequi be entered in this case.

Dated: New York, March 5, 1915.

Ast. U. S. Attorney.

This defendant has been tried twice; each trial lasted at least a week. Upon the trials the evidence was presented as forcibly and as clearly as the circumstances permitted. It, nevertheless, did not prove sufficient to convince either jury beyond a reasonable doubt of the defendant's guilt. I do not see any reason to believe that the case could be more forcibly presented to another jury, and I am forced to conclude that there is no reasonable prospect of success in continuing this prosecution. For these reasons and for the reasons stated in the foregoing memorandum of Assistant Wood and Assistant Hershenstein I direct that a nolle prosequi be entered herein.

Dated New York, March —, 1915.

U. S. Attorney.

Mr. GARD. Feldman was acquitted?

Mr. HERSHENSTEIN. Yes; Feldman was acquitted, and we nolle prossed any indictment against Mr. Kugel.

Mr. CARLIN. How long does it take, usually, after an indictment is found in your office, before a trial is had?

Mr. HERSHENSTEIN. It sometimes takes about six or nine months; sometimes over a year. It has lessened materially since we have had the out-of-town judges come here, and we hold more than one criminal court at one time.

Mr. CARLIN. Under your present practice, how long on an average does it take?

Mr. HERSHENSTEIN. It takes about six months.

Mr. CARLIN. About six months.

Mr. HERSHENSTEIN. Yes.

Mr. CARLIN. And can you tell me why it is that Rae Tanzer has not been tried, although she has been indicted about a year?

Mr. HERSHENSTEIN. I can.

Mr. CARLIN. Why?

Mr. HERSHENSTEIN. My knowledge, as I understand it, is because Mr. James W. Osborne, was, for a long while, engaged in the prosecution of the New Haven case, and the reason why she has not been put to trial right now is because we did not want to have anybody claim it was unfair to push a man to trial when he was busy with this investigation. The office is prepared to go to trial to-morrow morning with either one of the cases.

Mr. CARLIN. With what investigation, do you mean?

Mr. HERSHENSTEIN. We understood Mr. Slade was busy with you people, and was busy in Washington; it was reported he was in Washington; it was reported he was called as a witness, as I know it.

Mr. CARLIN. Mr. Slade is not busy with this committee.

Mr. HERSHENSTEIN. I beg your pardon for making that statement.

Mr. CARLIN. He was before us once.

Mr. HERSHENSTEIN. I beg pardon for making that statement. I did not mean that.

Mr. GARD. Would you object to telling this committee from whom you derived the information you have given us, that the reason you did not bring these people to trial was because Slade was busy with this committee?

Mr. HERSHENSTEIN. I want to withdraw that. It came from nobody. What I wanted to make clear was that we thought it would be unfair to rush these cases to trial just at a time when they were the subject of discussion and investigation by another and higher tribunal.

Mr. GARD. You want to withdraw your statement you made a moment ago?

Mr. HERSHENSTEIN. Yes; I want to withdraw that statement.

Mr. GARD. Did you have charge of the indictment before the grand jury of Rae Tanzer?

Mr. HERSHENSTEIN. No, sir. Mr. Wood had charge of the Tanzer and Slade cases, but I know every single thing that has happened during the time that Mr. Wood has had those cases.

Mr. CARLIN. We do not want any testimony that was before the grand jury.

Mr. HERSHENSTEIN. No, sir.

Mr. CARLIN. We do not ask you for that.

Mr. HERSHENSTEIN. No.

Mr. CARLIN. Have you any other information about those cases that you care to give us?

Mr. HERSHENSTEIN. Just ask me any question you care to put to me, and if I can consistently with my understanding of the rights in this thing, answer it, I will give it to you.

Mr. CARLIN. What about the question I have just asked you?

Mr. HERSHENSTEIN. I do not think I have, with me. If you ask me for something, and I think I can give it to you, you can have it.

Mr. CARLIN. You have the testimony with reference to Oppenheimer, but you have not had any testimony here about the Rae Tanzer case?

Mr. HERSHENSTEIN. I will tell you why; because I have had charge of the Oppenheimer case—I mean, it is my case—and the other case is Mr. Wood's case. That is the reason.

Mr. CARLIN. Who is counsel for David Lamar?

Mr. HERSHENSTEIN. I assure you I do not know.

Mr. CARLIN. He was a witness before us.

Mr. HERSHENSTEIN. Oh, yes; Carl Whitney, a partner of Mr. Wise.

Mr. CARLIN. Have you ever talked with him about the indictment against Lamar and others? Have you ever talked with Whitney?

Mr. HERSHENSTEIN. Mr. Whitney?

Mr. CARLIN. Yes.

Mr. HERSHENSTEIN. I do not think so. I am almost certain I did not. I do not know anything about the Lamar case or the Buchanan case.

Mr. CARLIN. You do not know anything about it?

Mr. HERSHENSTEIN. Absolutely nothing whatsoever; never talked about it; never had anything to do with it.

Mr. CARLIN. Do you practice law, independently of your connection with the district attorney's office?

Mr. HERSHENSTEIN. I do not. I was for three years with Prof. Charles Thaddeus Terry at Columbia Law School, during my three years at the law school, and since then I have never been in private practice.

Mr. CARLIN. In the trial of a case before a petty jury, is it your custom to use the minutes of the grand jury in interrogating witnesses?

Mr. HERSHENSTEIN. Never. It has been rigidly adhered to by Mr. Wise, and followed by Mr. Marshall that we never use the grand jury minutes at a trial.

Mr. CARLIN. In the Kugel case—did you try that case?

Mr. HERSHENSTEIN. Mr. Wood tried that case.

Mr. CARLIN. Mr. Wood tried that case?

Mr. HERSHENSTEIN. Oh, I wish to state this, that if a witness for the defense, who had appeared before the grand jury, testifies to a statement which I think is false, the most we can do in our courts, under the rulings about grand jury minutes, is to ask: "Did you not at some other time testify to a different state of facts?" Now, there has been some exception by the rulings of one or two judges—I do not remember in what cases—judges who have allowed the ques-

tion, "Did you not, before a grand jury, testify to something different?" but that is the only thing, to my knowledge. Mr. Wood tried both cases. I did not examine a single witness in court.

Mr. CARLIN. Do you remember the Keen case?

Mr. HERSHENSTEIN. Yes, sir; very well.

Mr. CARLIN. What was your connection with that case?

Mr. HERSHENSTEIN. I had charge of the case.

Mr. CARLIN. After it was decided by the referee in that case that there was no violation of the Federal law, was your connection with the case ended?

Mr. HERSHENSTEIN. It was absolutely ended, except when I walked into Mr. Wood's room, and was told that he had telephoned to the district attorney's office of the county of New York, acting under instructions from Mr. Marshall, and would I turn over all the books and papers to the district attorney's office.

Mr. CARLIN. Were you present with Mr. Wood and Mr. Marshall when a conclusion was reached to turn them over to the district attorney of New York County?

Mr. HERSHENSTEIN. Here is what happened. There was a question about our right to turn over those papers, which came at first from Bard & Keen, and I suggested could he not call up Mr. Wise, and he did that in my presence, and Mr. Wise gave him permission. He says, "Go ahead and turn what you have over to Mr. Brogan," or the man who had charge of the case.

Mr. CARLIN. I am trying to get at how you concluded it was any part of your duty to turn this man over to the county authorities?

Mr. HERSHENSTEIN. I am quite certain I was not present at the first conversation about that. I do know positively, because I have asked Mr. Wood, to make sure—I know that he called up Mr. Brogan, or called up some one over there after he had talked to Mr. Marshall, and that thereafter Mr. Wise or Mr. Whitney was notified, I think, by our office.

Mr. CARLIN. Then, you did not advise Mr. Marshall that this man ought to be turned over to the county authorities?

Mr. HERSHENSTEIN. I may have done that, because I insisted then, against Mr. Marshall's opinion, that Bard & Keen were guilty of a scheme to defraud, and I now voice my opinion that we had the evidence to indict them, if you want my opinion.

Mr. CARLIN. Just answer my question. Did you or did you not advise Mr. Marshall that this man ought to be turned over to the county authorities when you all released him?

Mr. HERSHENSTEIN. I am not sure. I may have done that. I would not swear that I did not tell Mr. Marshall that the county district attorney's office ought to investigate the case.

Mr. CARLIN. You say you had plenty of testimony to convict this man?

Mr. HERSHENSTEIN. I said I told Mr. Marshall that I thought the referee was wrong; that I thought we had a case in the nature of a scheme to defraud against these men, and if you want to know why I will tell you.

Mr. CARLIN. I do not care to go into that. I am just trying to bring out why, after you all had disposed of the case yourselves, you turned it over to somebody else to prosecute him.

Mr. HERSHENSTEIN. I remember this: That Mr. Whitney, sitting in Mr. Marshall's room, argued with him, "Mr. Marshall, you put before me certain statements. If they are true the county district attorney is the place for that sort of thing, and they can convict much more easily and with much less expense than you." I may have told Mr. Marshall that the case should be turned over, but I know I did not turn it over.

Mr. CARLIN. Do you know that the county district attorney decided that he had not any case against him?

Mr. HERSHENSTEIN. On the day when Mr. Brogan testified I did not know that.

Mr. CARLIN. You know it now?

Mr. HERSHENSTEIN. I know it now.

Mr. CARLIN. Then, you do know now that the referee decided there was no Federal case against the man?

Mr. HERSHENSTEIN. Yes.

Mr. CARLIN. And you do know that the county district attorney decided that there was no State case against Mr. Keen?

Mr. HERSHENSTEIN. Yes; I do.

Mr. CARLIN. Then, if Mr. Wood should have testified that you went with him to advise Mr. Marshall to turn this over to the county district attorney, Mr. Wood is mistaken?

Mr. HERSHENSTEIN. If Mr. Wood's recollection is as you say, I will say his recollection is absolutely right. I may have gone with him.

Mr. CARLIN. And if he did not say it you did not go with him?

Mr. HERSHENSTEIN. I say I am not positive whether I told Mr. Marshall or not. I know Mr. Wood and I discussed it, and I told Mr. Wood I thought the county district attorney should get the case, and I think I told Mr. Wood what Mr. Whitney had told to Mr. Marshall and myself.

Mr. CARLIN. How about arresting Mr. Keen and his associate? What was the name of the other party?

Mr. HERSHENSTEIN. Mr. Bard.

Mr. CARLIN. He was locked up, I believe, and kept overnight?

Mr. HERSHENSTEIN. Kept in the Tombs overnight.

Mr. CARLIN. Is that the practice in New York, to arrest men late in the evening?

Mr. HERSHENSTEIN. Mr. Carlin, I do not think I can answer that question in a yes or no answer. It is not the practice where you do not have facts to justify it.

Mr. CARLIN. Did he ask you to wait there until he could get a bondsman, after he was arrested?

Mr. HERSHENSTEIN. Mr. Carlin, in the commissioner's room, long after his office hours, and he being the only man who could take the bond, Mr. Keen or Mr. Bard said, "Is there not any other way to keep me away from the Tombs?" And I stayed two hours longer, and the commissioner did, and their bondsman did not appear. I said, "If we can find a judge, we will do it." But I did not see any way; and I did not have to stay the extra two hours to accommodate them; I did not want them to go to the Tombs; and if you will permit me to explain what transpired the day before, you will see what had happened.

Mr. CARLIN. I will be glad to have you explain it; yes.

Mr. HERSHENSTEIN. Mr. Bard had come down to my office and given me a voluntary statement that everything was all right, all clean, everything O. K.; that he would keep everything in statu quo; and the next thing, this Anderson, who was the complainant, came in and told our office that every blessed thing in the place of Bard & Keen—the sample prints, which I had learned at that time were the property of the manufacturers—and everything there was taken out and sold to a man named Landy out in Pittsburgh. It was our impression, and I talked to Mr. Marshall about it——

Mr. CARLIN (interposing). You were not trying to recover the property, were you?

Mr. HERSHENSTEIN. No; but I mean it was an act showing he wanted to clear out and dispose of everything in the office. There was a conversation with the post-office inspector, in which the post-office man was told he was going out West.

Mr. CARLIN. Mr. Keen, two or three days after that, came in and surrendered himself, did he not?

Mr. HERSHENSTEIN. Mr. Keen surrendered himself after a complaint had been issued; in other words, he was, so far as our office was concerned, a fugitive—do you see what I mean—and he was arrested.

Mr. CARLIN. He was not arrested; he surrendered?

Mr. HERSHENSTEIN. No; he came in and surrendered himself.

Mr. NELSON. Mr. Bard was sent to the Tombs?

Mr. HERSHENSTEIN. Yes.

Mr. NELSON. And you went on to state that he had promised to keep things in statu quo and, in the meantime, had disposed of his goods. Why were you concerned with the disposition of his goods?

Mr. HERSHENSTEIN. I was not. I was trying to explain why.

Mr. NELSON. Explain just in a few words, if you can, why that concerned you.

Mr. HERSHENSTEIN. It did not concern us, except as I tried to tell you, it was an act which, to my mind, meant he was going to clear out.

Mr. NELSON. You mean, run away?

Mr. HERSHENSTEIN. Yes; run away. It was Bard. Keen was not sent to the Tombs. We had heard that Keen was a very wealthy fellow.

Mr. NELSON. Because you heard he had sold the goods, you were afraid he might leave?

Mr. HERSHENSTEIN. Disappear from the jurisdiction.

Mr. NELSON. What was the charge against Bard? A Federal charge?

Mr. HERSHENSTEIN. Yes; a Federal charge; a scheme to defraud.

Mr. NELSON. By using the mails?

Mr. HERSHENSTEIN. Yes.

Mr. NELSON. How?

Mr. HERSHENSTEIN. Yes, sir.

Mr. NELSON. That crime would be complete, irrespective of what happened to the goods?

Mr. HERSHENSTEIN. Certainly.

Mr. NELSON. Were you concerned more with helping some one to secure the goods?

Mr. HERSHENSTEIN. I was not; and the proof of that is that there was never delivered to our office a single reel of film in that case, although they were delivered to the county district attorney's office. It is a rule in our office, and I insisted then to have nothing to do with the civil end of the case at all. It was something, which, to my mind, meant he was going to run away.

Mr. GARD. There are just two questions I want to clear up. We have positive testimony here that you said to Mr. Feldman, who was acquitted after your long labors in this case, and after resulting in a nolle as to Mr. Kugle as well—Mr. Feldman says you said to him in the grand-jury room: "I will send you to prison if you do not involve Kugle. We do not want you; we want Kugle."

Mr. HERSHENSTEIN. That is an absolute falsehood. I can not give you the minutes; I wish I could. Every word taken there is down on the record. If I said that, then I want to go to jail. It was never said.

Mr. GARD. You say what?

Mr. HERSHENSTEIN. I say, if I said that to him in the grand-jury room I want to go to jail for it.

Mr. GARD. You want to go to jail?

Mr. HERSHENSTEIN. Yes; if I said that.

Mr. GARD. How about this: Mr. Feldham says—this is again in the grand-jury room, after you had called him a number of times in the grand-jury room—"Hershenstein asked me to tell him the story over and over again, and called me down and called me a liar." How about that? Did you use language of that kind in the grand-jury room?

Mr. HERSHENSTEIN. I may have called him a liar.

Mr. GARD. In the grand-jury room?

Mr. HERSHENSTEIN. Yes; I may have done that.

Mr. GARD. Will you say that you did or did not?

Mr. HERSHENSTEIN. I can not recall. I should not be surprised if I called him a liar.

Mr. GARD. How do you justify that?

Mr. HERSHENSTEIN. Well, I justify it in the heat of an examination, where I feel that I have evidence which connects a man with a crime, documentary evidence, and he will insist that such is not the fact, that I may have done that. I do not swear that I did; I do not want to swear, because I can find out from the grand-jury minutes if I did that.

Mr. GARD. You say that your best recollection is that you did? This committee is not here to criticize you; we do not want to be understood in the light of criticizing you, but it certainly would seem to me, as one of the members of the committee, that language of that kind, used by a member of the bar in a grand-jury room, to a witness who he himself has called, is not professional, to say the least.

Mr. HERSHENSTEIN. I will state, under oath, that I do not recall having made that statement to him, and if the grand jury's minutes show I did, then I did it. I do not remember using it. I do not remember calling him that.

Mr. GARD. But you have just gotten through practically saying that you did.

Mr. HERSHENSTEIN. I will stand by anything the record shows. I may have done it.

Mr. GARD. We have not the record.

Mr. HERSHENSTEIN. I mean the record before you—my statements here now. I may have done that.

Mr. GARD. You may have done that?

Mr. HERSHENSTEIN. Yes; I may have.

Mr. GARD. If you did do that, can you justify language of that kind used by a United States district attorney to a witness in a grand jury room?

Mr. HERSHENSTEIN. No; I would say that I ought not to do that, if I did it.

Mr. GARD. Would you say that you should not have done it?

Mr. HERSHENSTEIN. I should not have done it, and I do not—I state positively that it has never happened to me that I should use that kind of language, and that if I did use it at that time, it was the only time I ever did.

Mr. GARD. You will pardon me if I ask you another question, and this is again without any offense—

Mr. HERSHENSTEIN. Yes, sir.

Mr. GARD. It is based upon information that we have that you have habitually used language of that kind in the grand jury room?

Mr. HERSHENSTEIN. No; that is absolutely untrue.

Mr. GARD. And to other persons whom you have called or who have responded to these so-called request cards of yours.

Mr. HERSHENSTEIN. That is absolutely untrue. I have never in my life done it, either in my office or in the grand jury room. I have with me copies of the statement made by Feldman to the office, where I have said to him that does he know that if he testifies before the grand jury falsely that that is perjury. I have never called him a liar.

Mr. CARLIN. The committee has finished asking you questions, except this one: We will ask you if there is anything that you feel as if you should say to the committee, independent of any question we have put to you?

Mr. HERSHENSTEIN. I would like to say to the committee that I know of no unethical or unprofessional thing that I have ever done while I was connected with Mr. Wise or Mr. Marshall, and I have not practiced privately or used the office for any personal benefit, and know of no single blessed thing which I can not tell you, and no piece of evidence which is not open to your inspection in any case that I have ever been connected with. So far as the three particular cases that you have picked out from a long list of cases I have been connected with—

Mr. GARD (interposing). I have another case in mind, but go ahead with your statement.

Mr. HERSHENSTEIN. I felt and the office felt that Mr. Kugel was guilty. I felt and the office felt that Mr. Oppenheimer was guilty, and that is why they were indicted. I want to say this, Mr. Chairman, if you will permit me, that since my connection with the bankruptcy cases in my office, I have become the enemy of a lot of people in New York City—crooked bankrupts—who do not like the persistency with which our office pursues them. I have made enemies among them, but I can not help it; I can not help that, and I am just there to do my duty as I see it in all fairness and in conscience. I do not remember doing an unfair thing; I do not remember doing an

unworthy act. I have striven to find the truth; I have used the Government's time and my time at nights to either find a man guilty or innocent, and where I discovered I was wrong, I undid the wrong that the office ever did to any man. I am here to lay before you every single thing I know in every case I ever handled, and I will say to you that the statements made before you under oath concerning the things they say I did are false and untrue and simply because of their hatred for me because of my work in those cases in the office.

Mr. CARLIN. You mean to say that it is a case of you against the lawbreakers and the lawbreakers against you?

Mr. HERSHENSTEIN. Absolutely.

Mr. CARLIN. The reason I asked you if there is anything that you want to state is because there may be something that will occur to you after you leave, that you would like to have us know.

Mr. HERSHENSTEIN. No.

Mr. CARLIN. If you desire to offer any other copies of the record in any case—

Mr. HERSHENSTEIN (interposing). Yes; I would like to offer a copy of the nolle pros in the Kugel case, if you have no objection.

Mr. CARLIN. We would like to have it.

Mr. HERSHENSTEIN. I would like to offer the Cohen correspondence, if you wish it.

Mr. CARLIN. I do not think we need that. It is in the record.

Mr. HERSHENSTEIN. May I now ask a question?

Mr. CARLIN. Yes.

Mr. HERSHENSTEIN. There was a witness called, Siegel—his name was Harry Siegel. If he has said anything derogatory about me I would like to be interrogated about it.

Mr. CARLIN. The record is here and you may see it.

Mr. HERSHENSTEIN. May I have permission to look over any of the testimony given, if you have no objection, and if there is anything else I would like to say I will communicate in writing to the committee?

Mr. CARLIN. The Siegel testimony is here.

Mr. NELSON. What was it you had in mind about Siegel's testimony?

Mr. HERSHENSTEIN. Some one came in and told me that Siegel testified that he was coerced to give testimony against Oppenheimer. I have got a copy of his original statement. Mr. Chairman, of over a hundred pages, made in the presence of Mr. Isidore Kresel, of the New York bar, and Mr. Clark, a partner of Mr. Root, and myself at four or five sessions, where, if his testimony is true, it convicts him.

Mr. CARLIN. Do you know Mr. Le Gendre?

Mr. HERSHENSTEIN. Yes.

Mr. CARLIN. Were you present in the office when Mr. Le Gendre was in the district attorney's office for the purpose of making a picture of Rae Tanzer?

Mr. HERSHENSTEIN. I came in at the finale of the interview. I had nothing to do with its inception, but I was present at the subsequent grand-jury proceedings in the case. I heard his testimony before the grand jury, and Mr. Wood asked me to take a short statement about the time the chief, Mr. Marshall, was calling him.

Mr. CARLIN. Who was present when you appeared at the finale, as you call it?

Mr. HERSHENSTEIN. There was Mr. Offley; that is, the chief of the bureau of investigation; Mr. Le Gendre, the protographer; Mr. Wood, Mr. Marshall, and myself. Mr. Osborne—James W. Osborne—came in at the very lag end of the interview.

Mr. NELSON. How could you know when the lag end was, when you came in at the finale?

Mr. HERSHENSTEIN. I say that because when I came in there Mr. Wood outlined to me what the whole situation was about, and then I remember that Mr. Osborne came in.

Mr. CARLIN. Were you there when Le Gendre was engaged to make the picture?

Mr. HERSHENSTEIN. I do not think so. I am quite certain I was not. Engaged to make the picture? Oh, just a moment. Either Mr. Offley or Mr. Baker, of the Department of Justice, was there, and after Mr. Wood told me of the substance of the conversation, why, I do remember when Mr. Le Gendre was told to go ahead in his work, and the purpose of it, as I understood it——

Mr. CARLIN (interposing). Who told him to go ahead?

Mr. HERSHENSTEIN. Mr. Marshall. Mr. Marshall. The purpose being to have the Slades carry out their former intention of what they had in mind, and Mr. Adams was told to look out for the telephone end of it, and I think he did keep a record of the telephone calls made to Mr. Slade's office, and I secured the original telephone sheet thereafter.

Mr. CARLIN. Made by whom?

Mr. HERSHENSTEIN. By the telephone company, of the telephone call which Le Gendre made to Slade's office.

Mr. CARLIN. Did you know the conversations that took place on the telephone?

Mr. HERSHENSTEIN. Oh, no. I was not there, except that they were reported to us by Mr. Le Gendre.

Mr. CARLIN. Le Gendre made the picture for your office, did he not?

Mr. HERSHENSTEIN. Mr. Le Gendre thereafter brought back to the office the two separate pictures. Mr. Chairman, I do not recall whether there were two separate pictures—I have not looked at the envelope since the thing happened—two separate pictures, or one picture of the two together, or both, but I do know that I was told that the Slades had talked with Le Gendre about making—trying to get a picture of Rae Tanzer and Mr. Osborne together at one time in one place for the purposes of their case, and Mr. Le Gendre made that just to show the office how it could be done—how it was to be done for them.

Mr. NELSON. You have made two statements there—how it could be done or how it was to be done?

Mr. HERSHENSTEIN. How it could be done, and was to be done. He explained how it was to be done, and how it could be done. As I recall it—and if you want this—I was not there, but if you want this, I can give you what they said.

Mr. CARLIN. I do not want anything that you do not know. You do know that he was directed by Mr. Marshall to make this composite picture?

Mr. HERSHENSTEIN. No; I do not know.

Mr. CARLIN. Did you not just say Mr. Marshall told him to go ahead?

Mr. HERSHENSTEIN. Mr. Marshall told him to go ahead, yes; but that either meant to go ahead with the telephoning to Slades, or go ahead with the picture. Now, I can not tell you the exact conversation that happened, because it is not as fresh in my mind as something which I personally had charge of, or was present at during the entire interview.

Mr. CARLIN. Did you stay there until that little conference broke up?

Mr. HERSHENSTEIN. I was there until it finally broke up. I know Mr. Le Gendre thereafter brought the pictures.

Mr. CARLIN. About what took place between Mr. Osborne and Le Gendre and Mr. Marshall, do you know that?

Mr. HERSHENSTEIN. I can tell you that, I think. In order to have Le Gendre carry out the scheme entered into between him and Slade, to get a picture for the Slades' use showing the girl and he together, Mr. Marshall wanted Le Gendre to find out from Mr. Osborne where he could be—where he would be at a certain time and place, so that when he, Le Gendre, talked to Slade, he would know where to suggest that the meeting place be.

Mr. CARLIN. Was the meeting place agreed on?

Mr. HERSHENSTEIN. It never progressed that far. There was one telephone call by Le Gendre to the Slades, and thereafter the thing was not carried through.

Mr. CARLIN. Was Slade indicted for any connection with that matter?

Mr. HERSHENSTEIN. He was indicted; yes, sir. Now, Mr. Carlin, I have not given you the testimony—the evidence, you see. I have not given you the evidence on that point. I have not told you what I was told the conversation was, except the end part of that one talk. There were other conversations. There is one statement which I took from Le Gendre, which is in the possession of Mr. Marshall in the safe, and there are a number of hearings before the grand jury, which he has also; but thereafter Mr. Slade or the Slades were indicted for a conspiracy to obstruct justice, one of the charges of the indictment being the attempt to get a picture whereby it could be shown that the girl and Mr. Osborne were at one time and place together. The one you need to look at is the one for obstructing justice; the other is just the Safford end of it—influencing witnesses.

Mr. CARLIN. I think that is all we want to ask you, for the present, unless you have something more to say.

Mr. HERSHENSTEIN. No; I have nothing more to say.

Mr. CARLIN. Then, we will excuse you.

Mr. HERSHENSTEIN. Thank you, very much.

Mr. CARLIN. The committee will now go into executive session for a few moments.

(Whereupon, at 6.30 o'clock p. m., the subcommittee went into executive session.)

EXHIBIT No. 40—MARCH 24, 1916.

In compliance with the request of your committee, I submit the following written statement of facts as I now recall them:

I was the managing clerk of the Hotel Kensington, Plainfield, New Jersey, previous to the 18th day of October, 1914, and severed my connection with the said hotel the 1st of March, 1915. During my term of service at this hotel, on Sunday afternoon, the 18th of October, at the dinner hour, a gentleman and lady were seated in the dining room, and after having finished, the gentleman came to the office, leaving the lady at the table, and inquired of me if there was desirable real estate that could be purchased in Plainfield for a residence for himself and wife, as the city had been recommended to him as within easy commuting distance of New York, and that he had been transferred to the customhouse, not mentioning his official capacity, and wanted me to direct him to some property or any property that was in the market. I showed him a map of the city—the desirable residential section. I became interested and sought the advice of the proprietor, he being a property holder. He told me of a property in one section of the city, which I came back and directed the gentleman to, and they left ostensibly to view the property directed to. After a space of perhaps an hour or so this lady and gentleman returned.

The lady was given a seat directly opposite my desk, and the gentleman leaning on the cigar case; said the property was too near the railroad, the noise would be objectionable, and that they would look further, and would remain at the hotel and he would go into the city in the morning and come out early, and in the meantime I would probably be able to find something more desirable, as I had mentioned a real estate man who dined with us regularly. He then asked me to show him some rooms, and, taking my vest key, I, with the gentleman and lady, went through the first floor, showing them two different rooms. Being somewhat noisy, suggested that they will take a more quiet location; went on to the third floor; showed them three rooms—room 11, room 16, and finally they objected to the noise and the close proximity to the bathroom, I took them around to room 15, which was at one end of the hall away from the noise of the railroad, and they seemed to feel that that room would suit them. I then said to the gentleman, "Please come downstairs and register with me." He left the lady, and came down the two flights of stairs. As we were passing down the second flight I told him that I was breaking a rule of the house in taking them without baggage, but, inasmuch as his baggage was in New York, and he was coming out in the evening and would bring it, I felt justified in taking them. He very cordially slapped me on the shoulder, told me that they would be very much at home there because they had been so nicely treated, and I was in my element as a hotel clerk. He registered as "Mr. Oliver Osborne" and "Mrs. Oliver Osborne," and I wrote on the ticket "Room 15." I did not ask them for pay in advance, as I had made them a weekly rate. He asked me, then, where he could get newspapers, and I turned to those that were lying on the safe and I told him to help himself. He did, took the papers, placed them under his arm, and just then I called Mr. Kitchen before he went upstairs, and introduced him, asking him if he knew of some property other than that which he had told me of, as they objected to the noise, and he also suggested the same real estate man that I had previously spoken of, and it was left open that we would endeavor to interest some one and have desirable places for him to look at when he came out Monday.

He bought three cigars, gave Mr. Kitchen one, placing one in his pocket, and gave one to me. He went upstairs. The dining room being closed, it was my custom to have two hours' rest. I went to my room; came down it was supper time. The hour for closing the dining room approached. I asked if the party in 15 had been to supper; nobody seemed to know. I went up to room 15, thinking perhaps they might have fallen asleep or had forgotten the hour; knocked on the door and there was no response. I knocked again, and turned the knob, and found that the door was not fastened, opened the door, did not step into the room—just gave a casual sweeping glance around the room, saw that apparently it had not been disturbed, and came downstairs. The proprietor was seated in the office waiting for me to close the dining room, when he left for his own apartments, as was his custom, and usually did not see him again. About one hour after he left the office he came downstairs, which was unusual for him; came to me at my desk and said to me, "Did you tell me room 15 had not been disturbed," and I said, "Yes; apparently not"; and he said, "On closer investigation I found it was very much disarranged, disgracefully so." The party did not return. We were both indignant; I was chagrined, feeling that I had been made the victim of a deadbeat, and really in a way responsible for not having charged him in advance.

I left the hotel March 1, 1915, secured employment at the Mountain Spring House, Greenwood Lake, and my term of service to begin April 1st. It being about ten days previous, I having been very closely confined for the previous year, wanting the rest and the quiet of the mountains, practically busied myself in assisting preparing the laurel grounds around the hotel, getting ready for the opening as the ice was nearly leaving the lake, and then the boats commenced running. After I had been there about nine or ten days, on Monday afternoon, March 22, a large automobile containing a colored chauffeur and Mr. William Darling, who was a former guest at the Hotel Kensington and had chatted with me frequently (that explains Mr. Darling's presence), a Mr. McCullough, whom I had never seen; Mr. David Slade, an attorney, whom I had never seen; and another gentleman by the name of Berman, whom I had never seen—Mr. Darling I had known six months previous only slightly as a hotel guest. They went to the hotel and asked the proprietor, Mr. Kasse, if I were around, and he said yes; I was down at the shore of the lake trimming trees and having the lawns cleaned. He called me. I came up into the hotel—about a thousand feet distance—and upon entering was introduced by Mr. Darling to Mr. McCullough, Mr. Slade, and Mr. Berman, gentlemen whom I had never seen nor heard of before. The usual salutations passed, and they asked me if I would have a drink, which I did, and drank a glass of brandy; do not recall what they drank, but in the change of conversation some of the party asked if they could get something to eat and it was suggested that I could make them some egg sandwiches, as we were camping at the hotel—Mr. Kasse and myself—and I went upstairs to the kitchen to prepare the same.

The gentlemen, escorted by Mr. Darling, came up to the kitchen, Mr. Kasse following, and while I was making the sandwiches Mr. David Slade said he understood I was the former clerk of the Kensington. I said I was. He showed me a photograph of the lady who was at the hotel, which I recognized instantly, as it was a full-faced photo. He also showed me a large photograph of the man who registered with the lady on the 18th of October, but it was a profile and I said it looked like the man—his broad shoulders up to his neck. I would say it was him but I would not be positive until I had looked him square in the face, and if he has a broad chin and thick lips, he was the man. Mr. Slade said he wanted me to come to New York and see if I could identify the man. I did not at that time know, nor either was it mentioned, who the gentleman was or that he had occupied any position other than an ordinary citizen. That I did not want to go to New York for reasons that were purely personal and had bearing upon a domestic difference which I had been gracefully avoiding, coming in contact with and dreaded the notoriety of being brought into public view. The day before this visit the pictures of these two people appeared in the Sunday paper, and I had said to Mr. Kasse that I recognized the people and the facts and was afraid that I would be called as a witness, but hoped that I would not. Twenty-four hours after that I was called upon by the above gentleman, and was quite upset, for the reasons as above stated, and demurred about going, but Mr. Kasse, the hotel proprietor, said, "Mr. Safford, I think it is your duty to go, and if in the interest of humanity you can benefit or help this little lady that has been imposed upon, it is your duty." I then said, "Well if you will wait until I dress, I will go with you, or I will come down to-morrow, but there is only one train each way a day and can not get there until late." It was then suggested that I go with them in the auto, and, as it had been stormy, snow, and sleet, I did not want to go, but felt it better than to take a long stage ride in the morning and get into New York too late for the hearing of this case, which was to take place on Wednesday following. I was told that Mr. Slade had a subpoena for me, and of course knew that it was necessary for me to go, and on the advice of Mr. Kasse went with the party, leaving about six in the evening. While I was dressing I told Mr. Slade I had no funds to pay my expenses and would like to have my expenses paid as mileage, etc. He turned to Mr. Berman and said, "Loan me \$10," which he did, and Mr. Slade handed it to me and said, "This is for your expenses, Mr. Safford; you are entitled to mileage, and it is fifty miles to New York and fifty back."

We left for New York. The chauffeur not being familiar with the road, went some six miles out of our way, and had tire trouble, and crossed Fort Lee Ferry about 1.30 a. m., which landed us in New York a few minutes later. It had been a very stormy, cold, snowy, rainy night. We were all thoroughly chilled. I not knowing any place to go at that hour, suggested to Mr. Slade that I go to some near-by hotel, and he very kindly said, "That is not neces-

sary; there are no hotels in this vicinity that you can get the comforts that you can in my own home, and you are welcome." We arrived at his home; the davenport in the parlor was unoccupied, and we made up a temporary bed. Mr. Slade went to his apartments and I retired. We were all too much fatigued and annoyed at the weather to discuss this case in any particular, and it was not talked about, only casually, as I felt I was only called upon to see if I knew the man, and really hoped it might not be he, as I did not want the notoriety and publicity.

I arose in the morning at 6, went out to the barber shop, and consumed, perhaps, three-quarters of an hour, and Mr. Slade came there to get his morning paper, waited for me to finish, and we went back to his home for breakfast and came down in the subway to his office, arriving at about 9.30. I met Mr. Darling in his office, and they were busy with their usual routine of business; went out with Mr. Darling and strolled around the city for an hour; we had a couple of highballs, came back to Mr. Slade's office, met Mr. McCullough, and we went to the Federal building to see if the gentleman in question was not trying a case and if I could not get a view of him without waiting for the hearing on Wednesday. There was no opportunity to find him in the Federal building, and I busied myself drifting around the city, visiting a moving-picture show; had my lunch—Mr. Darling was with me—and came back to Mr. Slade's office some time in the afternoon, and from there went uptown to his home and had supper; in the evening went to a picture show with Mr. Slade, and returned to his home at about 10 and retired.

The following morning, which was Wednesday, March 24, came downtown with Mr. Slade at 9 o'clock, met Mr. Darling and Mr. McCullough, and we went to the Federal building together, waiting for the examination, which was to take place at 10.30 that morning. There was a large crowd at the Federal building, much excitement occasioned by the Tanzer case, and it was with difficulty that we were able to enter the courtroom, so much so that we were crowded in and practically pushed out again. When I first entered, the gentleman who registered as "Oliver Osborne" was just leaving the witness stand, and I said to Mr. McCullough, "That's the man." We went out in the hall and remained a few moments in the crowd, when we were pushed back in again and down the center of the aisle, when Mr. McCullough saw my former employer, Mr. Kitchen, and pointed him out to me. I was pushed farther down until nearly opposite Mr. Kitchen, and Mr. Kitchen turned to me and said, "You did not expect this so soon, did you?" And I looked over his shoulder and said, "That's the man, all right," and he looked around and said, "Oh, I see you are with the Slade crowd." At that time I did not know there was so much feeling existing or that Mr. Kitchen had been interviewed and denied, after having said the photo of James W. Osborne was the man, that he had turned the matter over to his attorney and would not commit himself as to his previous identification. I was indignant at Mr. Kitchen's imputation of my being "with the Slade crowd," and we started to have some words, when Mr. McCullough pulled me away, and shortly after I was called to the witness stand, when I identified the person who registered with me as "Oliver Osborne" as being James W. Osborne, the party in question in the identification. I left the courtroom immediately after, and did not expect to be in any way called upon in the case until the trial was had, but before I left the Federal building I was besieged by reporters and hounded by detectives, who followed me and would not apparently lose sight of me, so much so that I went into a saloon with Mr. McCullough to get a drink, and two of them came right up beside me. One in particular stated that he was told he was not to lose sight of me; that he was going to stay with me that night; and I became quite incensed, but chose diplomacy and invited him to drink, which he did.

I went up to the Sixth Avenue Elevated with Mr. McCullough, and he came right along and would not leave me. This further incensed me, and I made up my mind that I would get rid of him, which I did by treating him repeatedly. He being the weaker of the two, fell asleep, and I left him asleep. I myself drank about eight highballs, which were made of ginger ale, and that nauseated me and made me quite ill. I, however, went to Paterson with Mr. Darling about 10 o'clock that evening, and Mr. McCullough came also, and I was followed by another emissary from the district attorney's office, who came up to me while I was registering at the Alpha Inn, and I became very indignant and told him I objected to being hounded; that I did not know why I should be so conspicuous a character, who just having identified a man who had imposed on me and had then, beside ruining an innocent girl, endeavored to cast an odium

on everyone; that I was going back to Greenwood Lake in the morning at 11 o'clock; that I wanted him to leave me at once, and threatened that I would throw the inkstand at him, and he left.

I became very much upset at the proceedings of the evening before and the dogging of the different emissaries of the district attorney's office, and did not know why I should be so persecuted, but, feeling the publicity and the newspaper notoriety that my testimony seemed to have given and not wishing again to have my domestic affairs brought into the limelight, knowing that I was going to Greenwood Lake at 11, I engaged an auto and asked Mr. Darling to come with me to Greenwood Lake; that I would pack my trunk and leave it there; that I would come back to New York and get a position, because I knew I would be wanted as a witness when the trial took place. I went to Greenwood Lake, and upon my arrival found that the evening before a deputy marshal with a subpoena from the United States district attorney's office had been there to subpoena me as a witness in the same hearing and had left word with Mr. Kasse that I was to appear, and that I was to charge ten cents per mile and get my fee from the clerk. Mr. Kasse will verify this statement if interrogated. This would show that twenty-four hours after Mr. Slade subpoenaed me the deputy marshal came to the same hotel and attempted to subpoena me, but I had already gone to New York with Mr. Slade. Again I refer you to Mr. Kasse for corroboration.

Mr. Kasse thought, after conferring with his wife, that it was best for me not to remain at the hotel, and I packed my trunk and left it there and came back to Paterson in the same auto, and the charge therefor was \$15.00. I have a receipted bill from Mr. Smith, the proprietor. Came into New York, saw Mr. David Slade, and asked him to reimburse me, as I had come back to New York and wanted to go to work and did not want to be idle. He took the bill, paid me the \$15.00, and I did not again see Mr. Slade until the day after Easter, which was two days after my arrest.

I asked Mr. Hanan, who was Mr. Slade's investigator and with whom I had become quite good personal friend, to interest himself and assist me in securing a position, and he, through acquaintance, wrote me that he had secured a position for me with the Pipe & Contractors' Supply Co., of 3 Dover Street, and that I was to go to work Monday morning. I stayed at the Hotel Ennis for two nights; my not having sufficient funds to see me over Easter, being annoyed by a gentleman who afterwards developed as a deputy, he being the party who arrested me on Easter evening. I pawned my watch for \$2.00, which would enable me to live over Sunday, and on Monday morning I was to go to work. I left the Hotel Ennis and went to the Clarendon Hotel in Brooklyn, secured a \$1.00 room and stayed there over that night. The next evening at about 7.30, while it was snowing very hard—in fact, a night for no human being to be out unless necessary—I was arrested in the corridor in a very dramatic manner by the same gentleman who had been annoying me at the Hotel Ennis, and coming into the telephone booth immediately on my coming out. I was brought over to New York in the snow, taken to the Greenwich Station, and confined in a cell until 10 o'clock Easter morning; was not allowed to see anyone; was not allowed to have a blanket; was compelled to sleep on a board bench with two opium fiends—Chinamen—and a man on the verge of delirium tremens. I appealed to the matron for a blanket; said was willing to pay for same, and was told they could not talk to me or hold any intercourse with me, as I was a Federal prisoner and was there by courtesy of the Federal Government.

At 10 o'clock the following morning (Easter Sunday morning), my clothing still wet, I was taken to a postal inspector's office in the Park Row Building. A man calling himself Baker insultingly interrogated me and asked me if I hadn't had enough to convince myself that I was mistaken in my identification, and I thereupon told him that I would give my answer before twelve men. I was told to go back where I came from and they would send for me Monday morning, which they did at 10 o'clock. The place in which I was confined was cold and damp, and was, in my mind, selected to make me as uncomfortable as possible and affect my nerves to a point where I would be forced to make such statements as they would suggest as to my being mistaken, all of which I indignantly refused to do.

Forty hours after my incarceration I was taken before the magistrates' Commissioner Houghton, he being the man who issued the warrant for my arrest upon the affidavit of Howard B. Mayhew, who never saw me and who did not know the facts, and who had testified that he swore to the affidavit on sug-

gestion of Roger B. Wood. As I was unable to reach or allowed to communicate with anyone during the forty hours, I secured counsel in my appearance before the commissioner in the person of Mr. Jacob B. Engel, and he stated, in brief, that I was an innocent party, being apprehended in a very peculiar way and at an inopportune hour, and was ready for trial, and the assistant district attorney, Roger B. Wood, said they were not ready, and insisted on my bail being placed at \$15,000. My attorney protested, and after a consultation the commissioner decided that he would make the bail \$12,000, which I refused to give. The bail being so excessive and so exorbitant, and not being acquainted in New York City, and they knowing the fact that I would be unable to procure that amount of bail, fixed that amount of bail with one purpose—to keep me confined in jail, which they did, and I was placed in murder's row alone with instructions to show me no courtesy. The feeling around the Federal building by those that were in authority, but could not commit themselves, was so much in my favor that I was escorted to the Tombs without being handcuffed; but after having been there two days, and requesting an audience with the grand jury, the deputy marshal, presenting himself to the Tombs to escort me there, I was surprised when he told me he had orders to handcuff me and allow me no privileges, and that this came from the district attorney's office. This was an unusual proceeding, as precedence has not been known for similar offense where a party has not been indicted, and it is the custom to-day of escorting prisoners without handcuffs. Your investigation will verify this statement.

I appeared before the grand jury, and upon my entrance was saluted with the interruption by Mr. Marshall, "Safford, don't you know you are a thief?" and I said, "I do not." "You wrote this letter asking to make a statement to the jury and waiving immunity?" "I did; and would like to have the jury know exactly how I am situated in this matter." They then allowed me to tell my story of leaving the Kensington, and in detail about as I have stated previously in this affidavit, and I was interrupted by the district attorney, Marshall, who said, "Safford, you are lying; you have been coached; go back to your cell and think," and he turned to the grand jury and said: "Gentlemen, I do not want to ask this man any questions; he has been coached and is lying." I became indignant, ignored the district attorney, and addressed the jury as follows, as near as I can recall: "Gentlemen, I do not want you to indict me; I have not committed perjury; I have no desire to wrong any human being. If the gentleman whom I identified will be brought into this room now and write his name just as he would register at the Hotel Kensington, and I have made a mistake, I will apologize to him." And the district attorney, Marshall, again said: "Safford, you are lying; go back to your cell and think." And I said: "Gentlemen, you ask me any question you wish; I don't want to be indicted; it is not fair." One juror asked me how much money I had received from the Slades, and I told them \$10.00 expenses when they subpoenaed me, \$15,000 to reimburse me for auto hire for which I presented a receipted bill, and a subsequent \$10.00 that I borrowed from their representative, Mr. Hanan, not expecting him to turn it in to the Slades, but supposed it was a personal loan. It afterwards developed that Mr. Hanan did render an account to the Slades of his having given me \$10.00. The district attorney said, "There are no more questions to be asked; I do not want to ask him any. He better go back to his cell"; and I thanked the jury for their audience"—said, "I sincerely hope you will not indict me," and I left the room. My counsel was waiting outside, and I said, "I practically am preindicted; it was not necessary for me to make any statement. I have been grossly insulted; the district attorney is no gentleman," and I went back to the Tombs.

After remaining there six weeks, suffering many hardships and curtailment of many courtesies that were extended to many others which were not extended to me on account of instructions—being so told by those who denied me the privileges—my trial was had.

The weather became intensely hot. I asked that I receive my trunk or could I have a friend upon the same and get my light underclothes? I was insultingly told that Mr. Wood's reply was that they would have a suit of clothes to fit me and that I would not need any clothes that were in my trunk. My friend of years' standing was very indignant, and he made vigorous protests and repeated demands until, finally, I was allowed to open my trunk in the presence of a marshal and take out sufficient wearing apparel as was necessary. My trunk was burst open and searched. A deputy at Greenwood Lake wrote my wife stating that he was instructed by District Attorney Marshall to break into the same, also that if she wanted a divorce from me and if she would get a warrant for my arrest and come quietly from Greenwood

Lake, that he would arrest me as I was about to leave the country. She replied that she did not think it was necessary; that she had no desire to secure a divorce; that I came from a good family; had been accustomed to good surroundings and money, and that she did not in any way wish to contribute to my discomfort.

My trial was originally set for Monday, May 3, 1915, pursuant to a notice to that effect—mailed to my attorney, Jacob B. Engel—by the United States district attorneys' office. Judge Charles M. Hough was sitting during the month of April in the trial of civil cases. Without any reason therefor my trial was changed to take place April 27, 1915, before Charles M. Hough, and I was accordingly put on trial on April 27, 1915, before Charles M. Hough. Judge Charles M. Hough dismissed the balance of the civil calendar and took my case up for trial, it being the only criminal case he tried. At that time Judge Farrington and another judge sat in the trial of criminal cases. I am attaching hereto an extract from the diary and from the records of my then attorney Jacob B. Engel.

I was placed on trial on April 27, 1915, and as to the actual occurrence of the trial I respectfully refer the committee to the record, which is now printed, as it would be wholly impossible for me to describe or to attempt to convey to the committee the misconduct of the trial judge, the United States District Attorney, Mr. Marshall; or his assistants, Mr. Wood, and Mr. Hershenstein. Broadly speaking, the case didn't have the least semblance of a judicial trial. In the language of the laymen, I was railroaded. I was not convicted by any legal proof; but I was convicted by the atmosphere that was created by the trial judge with the assistance of the United States district attorney and his subordinates. As a layman, I am unable to call to the attention of the committee the errors that were committed by the trial judge, and again I refer you for that purpose to the printed record on appeal. I, as an American citizen, expected to go into a trial court and to receive that consideration which a defendant is entitled to. In my judgment the lowest and the meanest criminal could not have been treated so outrageously as I have been treated. In addition to that my attorneys, who tried the case, were without warrant, without provocation, or without justification, grossly insulted, and were also browbeaten by the judge. It was evident from the judge's conduct that he was selected for the very purpose of obtaining a conviction under all circumstances and conditions. By circumstance and conditions it is absolutely evident that the desire was to save James W. Osborne at all hazards, even though I, an innocent man, should be sacrificed for that purpose. Without any object or motive whatever, an unwilling witness, which the facts, as before stated, will substantiate, brought into a case and convicted for telling the truth upon an unfounded, unjust charge from the judge, and a slanderous, insulting, and slurring arraignment by District Attorney Marshall.

It is further evident that the judge was spoken to prior to his assuming jurisdiction in this case from the fact that when I was sentenced the judge stated substantially as follows, as near as I can recall, that I was "a small spoke in a large wheel." I ask this committee to read the entire record, even with the errors contained therein and the illegal evidence introduced and allowed by the court, and see whether there are any facts warranting the judge in making this statement in sentencing me. That statement in itself demonstrates that the judge had practically rehearsed this case before he went on the bench, and was informed by the district attorney and others interested, including James W. Osborne, that I was but "a small spoke in a large wheel." I would respectfully ask that you investigate what he meant by such a statement.

While I was confined in the Tombs William R. Darling was apprehended on the misleading misstatement that he was a material witness who was about to abscond, and was brought back under arrest from Pennsylvania and placed in the Tombs. The purpose of placing William Darling in the Tombs was to bring about in him a condition by which he would make statements which would be desirable to the district attorney's office. I know of my own personal knowledge that at no time did William Darling attempt to evade any process, nor was he attempting to evade the purpose of being a witness. To my knowledge he was taken to the district attorney's office on two or three occasions prior to my trial and interrogated, and it is evident that he had followed the suggestions made to him by the district attorney's office, for in the trial of my case he testified contrary to the facts which he had sworn to in an affidavit made by himself at his own suggestion and at his own solicitation of the actual

occurrences and the actual facts by injecting the word "not" before the following statement: "That Safford said 'I was "not" positive that he was the man,'" whereas in his affidavit he positively swore that when I saw James W. Osborne in the courtroom I said to Mr. McCullough "I am certain and positive that that is the man."

Mr. Marshall, in his summation to the jury, when he found out for the first time at the trial of the case that Mr. Darling made an affidavit contrary to what he had testified to in the courtroom, and when said affidavit was used as an exhibit in the courtroom and Mr. Darling under oath had to admit that the affidavit offered was the true and gospel facts, and that what he had sworn to in the affidavit was true, Mr. Marshall, then to the jury in summing up, called him [Mr. Darling] a feeble-minded fool and a man who could not be relied on, although the Government used him as its material witness, thereby demonstrating that when Marshall found out that there was an affidavit in existence of which he did not know, which showed the facts to be contrary to what Darling was schooled to testify to, he went under cover by making this statement to the jury that he [Darling] was feeble-minded.

Immediately after I was sentenced, within an hour after reaching my cell, I was summoned to the visitors' room, and the records of the Tombs will show the hour of entrance, and was confronted by the same William Darling, who said he had come from the district attorney's office, and they had told him to say to me that if I would make a statement that I was mistaken and that James W. Osborne was not the man that they would see that I received a suspended sentence, and I indignantly referred him to my attorney, Mr. Engel, and that he went to Mr. Engel and told Mr. Engel that he had come from the district attorney's office and had seen me, and that I had referred him to Mr. Engel, and that I wanted to make a statement, and Mr. Engel, within 30 minutes, was at the Tombs to see me and was surprised to learn of the facts conveyed to him by Darling, which were untrue. The record of the Tombs will show the time of his entrance, the time of my leaving the tier on which my cell was located, and the time consumed in my interview with Darling. This is but one of the many instances in which I was importuned by innuendo and actual contact to make a statement that I was mistaken and after I did so I would not have anything to fear.

During my solitary confinement in the murderers' cell I had what is called a "stool pigeon" placed with me one night, who claimed he was in for violation of postal regulations, etc., and endeavored to get me to make a statement, and I refused to talk to him. He was liberated in the morning, not heard of again, because I would not talk.

In fact, I was being persecuted, and my friends, in addition to my counsel, realized that it was anything to save James W. Osborne at the expense of my reputation and liberty.

I desire to call also to the committee's attention that Judge Hough in sentencing me to nine months in the Tombs was also a trick, for I requested one year and one day to Atlanta, for in view of the jury's recommendation I would have to serve but one-fourth of my sentence and I would be entitled to parole, whereas by being sentenced to nine months in Blackwells Island with \$1 fine prevented me from being paroled after a period of four months, but I would have to serve the nine months in a most unhealthy, unsavory place of confinement, where I had expressed a preference for Atlanta if I must serve a sentence. In fact, I requested Judge Hough in open court that I be sentenced to Atlanta to one year instead of nine months in Blackwells Island, but the Judge arrogantly refused to comply with that request, which would show conclusively the animus existing and the endeavor to break my spirit, which is further manifest by the visit of Darling one hour after they sent me back to the Tombs after this inhuman sentence for telling the truth.

After I was sentenced and convicted my attorneys obtained from the United States Circuit Court of Appeals an order liberating me on bail pending an appeal, and my bail was reduced from \$12,000 to \$7,500 by the Circuit Court of Appeals. After the order was signed a bond was procured of a reliable surety company doing business in the city and State of New York, whose bonds are always accepted in the United States District Courts. Mr. Maxwell Slade got United States Commissioner Houghton and told him that I was about to be brought from the Tombs for the purpose of being liberated on a bond in pursuance to an order of the United States Circuit Court of Appeals. This being on Saturday, owing to my intense nervous condition and broken health on account of the dampness of the Tombs, he asked it as a personal favor,

The commissioner then informed Mr. Maxwell Slade, as well as the commissioner's stenographer, that he would go out for a short time and be back within a short time. At the time that the commissioner made this statement I was already brought from the Tombs, the bond ready, and all the commissioner had to do was to accept the bond. We waited from 12 until after 3 and the commissioner did not appear. Mr. Maxwell Slade then got in touch with the commissioner's private office here, and found out that the commissioner had gone to Red Bank, N. J., to remain there over Sunday. I am reliably informed that the commissioner lives in Red Bank, N. J., and that is his residence. Mr. Maxwell Slade from the Federal court building then got the commissioner on the telephone and informed the commissioner that he was greatly surprised that instead of the commissioner returning as he agreed to accept the bond to have Mr. Safford liberated, that he had gone to Red Bank, N. J., and from conversation that I heard from this end of the telephone it was evident that the commissioner told Mr. Maxwell Slade that Mr. Roger B. Wood, assistant district attorney, had informed the commissioner not to accept any bond, but that Mr. Safford should remain in jail over Sunday, and Mr. Slade told the commissioner that he was a judge and was not to receive any instructions nor was he to follow any instructions of the district attorney's office; that it was his duty when a bond has been fixed to accept the bond and not to insist upon a man remaining in jail merely to suit the convenience of the United States district attorney's office.

Mr. Slade also threatened the United States commissioner with calling this matter to the attention of the district court judges for this district. Before this occurred Mr. Maxwell Slade attempted to get in touch with some of the district court judges that were then visiting the United States men-of-war that were located here on the Hudson River, and was unsuccessful. Mr. Maxwell Slade again called up the commissioner and again threatened to call this to the attention of the court, and from this end of the wire it appeared that the commissioner said he would not come here until his expenses and disbursements were paid. We then made arrangements with Mr. Safarety, one of the assistants who was waiting all this time in the courthouse, and he wanted to get away, where we could get in touch with him, because the commissioner had finally promised to return to New York City at 9 o'clock, and came to the Federal building in Mr. Slade's automobile, which met him at the ferry, and before he would sign the bond he insisted upon being paid nine dollars and some odd cents, which was paid to him by David Slade in the presence of myself, Mr. David Slade, Mr. Maxwell Slade, Mr. Abraham Wynehouse, John J. Finnegan, a reporter of the New York American, a man named Weller, and the bondsman.

This further demonstrates the persistency of the United States district attorney's office and the other persons named to finally exhaust me, humiliate me, degrade me, and make every effort to impress upon me the power which they maintain and have and finally force me to yield to their wishes.

I desire further to call to the committee's attention that when I was a witness before the United States commissioner I had seen Mr. Osborne before I testified, when he was on the witness stand, or about to leave it. When I came on the witness stand I was facing Mr. Osborne, so that I had no trouble in locating him. I was asked a few questions by Mr. Slade before he asked me to pick out the man who stopped at my hotel under the name of "Oliver Osborne"; at that time I knew where Mr. Osborne was sitting, and I had no trouble in pointing him out. The commissioner in my trial testified that when I identified Mr. James W. Osborne he made a question mark opposite the identification. This is rather a curious coincidence, showing that he is "a small spoke in a large wheel." The making of the question mark shows that it is false in itself; that that was an afterthought to help along the scheme, already well on its way, and to create an impression before the grand jury by having a United States commissioner testifying against me.

I was confined in the Tombs for six weeks, as a result of which I lost in weight, I became nervous, sick, and sore, unable to sleep, and when I was about to be liberated, on Saturday as aforesaid, on the bond, I was assisted by two men; I could not walk, having lost the use and control of my legs.

I desire further to call to the attention of this honorable committee that I am unable to picture the scene that was created by Mr. Marshall and his assistants when Miss Tanzer was arraigned before the very same commissioner, the grandstand play that was made by him, the accusations of somebody nudging me in the elbow. The testimony of the post-office inspectors, Swaine and Mayhew, whom I had never seen and who never saw me, shows beyond any doubt

that after I had testified they were coached on that day and placed on the witness stand the following day for the purpose of creating the necessary stage setting which they had already planned in their minds.

This, gentlemen of the committee, is as near the facts as I can recall, in addition to the facts already stated to you orally while as a witness in Washington.

FRANK D. SAFFORD.

Sworn to before me this 28th day of March, 1916.

NOAH SEEDMAN,

Commissioner of Deeds, New York City, N. Y. Co. No. 1206.

EXTRACT FROM DIARY AND RECORDS.

The case of United States against Safford was set for trial for Monday, May 3rd, 1915, pursuant to notice received from United States attorney's office.

On April 23rd, 1915, entered into trial of case of United States against Kaplan before Judge Farrington. The trial continued up to and including Monday, April 26th, 1915, at about 5.30 p. m. The case was adjourned to April 27th, 1915, at 10.15 a. m., for sentence.

While waiting for United States against Kaplan to be reached on the calendar, word was received from the United States attorney's office that Safford would be called for trial on April 27th, 1915, at 10.30 a. m.

Attended before Judge Farrington in the case of United States against Kaplan at 10.30 a. m. on said day, and immediately proceeded to another part of the court to the trial of United States against Safford on said date, to wit: April 27th, 1916, at 10.30 a. m.

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,

HOUSE OF REPRESENTATIVES,

Washington, D. C., Wednesday, April 5, 1916.

The subcommittee met, pursuant to notice, at 3.45 o'clock p. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson.

TESTIMONY OF JAMES M. BARNETT, OF NEW BLOOMFIELD, PA.

(The witness was duly sworn by Mr. Russell, clerk of the subcommittee.)

Mr. CARLIN. What is your name, address, and occupation?

Mr. BARNETT. James M. Barnett; New Bloomfield, Pa.; attorney at law.

Mr. CARLIN. Did you have any connection with Mr. Bright?

Mr. BARNETT. Yes, sir; for perhaps two years, 1913 and 1914. I was concerned with him, with quite a variety of other attorneys in New York City, in some litigation connected with the South American Railroad Co.

Mr. CARLIN. What are Mr. Bright's initials, do you remember?

Mr. BARNETT. Charles Bright.

Mr. NELSON. Is that the same as the South American Securities Co.?

Mr. BARNETT. There were three companies. Mr. Bright, as the promoter, had purchased a concession from the Uruguayan Government to build a railroad, which he named the Pan American Transcontinental Railroad, and in connection with the construction of that road he had employed Mr. John Jay McKelvey, an attorney in New York, to incorporate a company in Maine, I believe, known as

the Pan American Transcontinental Railroad Co., to build the road, which was to be the railroad company. A second company, also a Maine corporation, called the National Railroad Construction Co., to build the railroad; and a third company, which he intended to use in connection with financing the railroad company and the construction company, called the South American Securities Co., and that company was incorporated, I believe, under the New York laws.

Mr. CARLIN. Was there a man by the name of McKelvey and another by the name of Favour related to these corporations in any way?

Mr. BARNETT. At the time the corporations were formed John J. McKelvey was employed as attorney by the corporation and later as attorney for the companies. Alpheus H. Favour at the outset was a younger attorney in his office and later became his partner under the name of McKelvey & Favour.

Mr. CARLIN. Were either of these gentlemen subsequently indicted for transactions relating to the company?

Mr. BARNETT. Yes, sir; both of them, I believe, were. Mr. Bright's principal litigation was as the principal defendant in an equity suit begun by his former counsel, McKelvey & Favour, against him with a view to obtaining control of the railroad company and the construction company for certain large investors, of whom Johnson Bros., of New York City, iron manufacturers, and John D. Rockefeller were the principal ones. That was an equity suit in the Federal court for the southern district of New York.

Mr. CARLIN. Do you remember who was their counsel?

Mr. BARNETT. Who was McKelvey & Favour's counsel?

Mr. CARLIN. Yes.

Mr. BARNETT. In the first place, it was Round, Sherman & Dwight, and later O'Gorman, Battle & Vandever, and these counsel were associated with Messrs. Murray, Prentiss & Howland, who were the Rockefeller-Johnson counsel.

Mr. CARLIN. Was H. Snowden Marshall counsel?

Mr. BARNETT. He was not in any way connected with the matter that I know of.

Mr. CARLIN. They were indicted in the State courts, were they not?

Mr. BARNETT. They were indicted, I believe, after my association with this case was ended. They were indicted for several statutory offenses in the State courts.

Mr. CARLIN. Who represented them there?

Mr. BARNETT. In the criminal courts they were represented by Messrs. Battle & Vandever. Senator O'Gorman never appeared.

Mr. CARLIN. Before they appeared was Mr. Marshall of the counsel?

Mr. BARNETT. He never was counsel for them that I know of.

Mr. CARLIN. Was he a member of the firm of Battle & Vandever?

Mr. BARNETT. I know only by hearsay. That is my impression, that he was a member of the firm of Battle & Vandever at one time. I do not know that. He was not called in connection with them.

Mr. CARLIN. Do you recall just how it was that Mr. Bright found himself in the Tombs in connection with that matter?

Mr. BARNETT. Yes, sir. As offshoots of the Bright equity suit in the Federal court there were four or five or possibly six suits in the

State courts of New York, and one of them was a proceeding begun by Messrs. Murray, Prentiss & Howland, I believe, to compel Mr. Bright to assign over to their clients or to the National Railroad Securities Co., I believe it was, about \$200,000 face value of bonds of the Pan American Transcontinental Railroad, Co. which Mr. Bright at a time before I was connected with the case—about 1912—had deposited with the Paris branch of the London & Brazilian Bank. They were later embargoed, as I believe the term is in the French law, by a man by the name of Vidal, who was a party in the principal equity suit that I spoke of, and Bright. Later on another embargo was placed upon them by a young man by the name of Gordon, connected with the firm of Murray, Prentiss & Howland. These bonds, it was claimed, belonged to the National Securities Co., but I believe it was subsequently ascertained that they did not so belong to the company, but did belong to the South American Securities Co. Mr. Bright, by reason of a judgment taken by default in the State courts, was subsequently arrested for contempt of court in refusing to sign an order to deliver these bonds to the National Railroad Construction Co. I only know by hearsay that he is now at large again. He was imprisoned for this contempt shortly after my connection with the case ceased.

Mr. CARLIN. At any time while you were his counsel did you or he make an effort to procure a Federal indictment against Messrs. McKelvey & Favour, or either of them?

Mr. BARNETT. Yes, sir. I think in the fall of 1913, after it had been discovered that Messrs. McKelvey & Favour had destroyed or at least failed to deliver over certain accounts belonging to the South American Securities Co., it was also discovered that they had made certain reports to the United States Internal Revenue Department with respect to the business done by the South American Securities Co. In the absence of the accounts, which were either destroyed or not delivered by Messrs. McKelvey & Favour, it was subsequently ascertained that considerable business had been done by the South American Securities Co.—at least that some tens of thousands of dollars had been handled through the bank. I forget the exact sum. Then it was that Mr. Bright, I think in the first place himself, went to the district attorney's office in New York City—the Federal district attorney—and asked for an indictment, not against McKelvey, but as against Alpheus H. Favour and Charles R. Demarest, an accountant who was connected with the office of McKelvey & Favour in some way or other, both of whom had been connected with what Mr. Bright alleged was a false report to the Government as to the financial condition of the Securities Co., in which it was alleged that they had done no business whatever.

Mr. CARLIN. Did you go with him at any time with reference to the indictment?

Mr. BARNETT. I went with him on one occasion that I remember of, and possibly twice, though I have no clear recollection of more than one time.

Mr. CARLIN. Whom did you see?

Mr. BARNETT. I saw there not Mr. Marshall, whom I never met, but Mr. Walker; I believe his name is John E. Walker.

Mr. CARLIN. What position did he hold?

Mr. BARNETT. I understood that he was a special deputy in the office of H. Snowden Marshall.

Mr. CARLIN. Had you reached the conclusion that an indictment ought to be had against these men?

Mr. BARNETT. I had; yes, sir.

Mr. CARLIN. Did you talk with Mr. Walker about indicting them?

Mr. BARNETT. Yes, sir; briefly.

Mr. CARLIN. Did you ask permission to go to the grand jury?

Mr. BARNETT. I do not recall that that permission was asked; no, sir. We went over the facts in the case and asked him, as I recall, to take the matter up, prepare a bill of indictment, and secure its presentment by a grand jury.

Mr. CARLIN. What was the result of that request?

Mr. BARNETT. There was no result so far as I know. I felt that Mr. Walker was not very much interested in the matter, and I believe I said to Mr. Bright, after we left, that I thought he would do nothing in the matter, and that is all I know about it.

Mr. CARLIN. Why did you think he would do nothing?

Mr. BARNETT. From the way he spoke—discouragingly. One expression I recall that he used was that it was exceedingly difficult to convict on perjury. He talked, too, in a way that I would have talked if I had had no intention to proceed with the matter. I did not think that he would do anything, and I think I so stated to Mr. Bright.

Mr. CARLIN. As a matter of fact, he never has done anything, has he?

Mr. BARNETT. So far as I know, he never has. He never did while I was connected with the case.

Mr. CARLIN. How long ago was that?

Mr. BARNETT. I think that was in the fall of 1913.

Mr. CARLIN. Do you know whether that offense, for which you sought indictment, has been now barred by the statute or not?

Mr. BARNETT. I understand it has.

Mr. CARLIN. You do not know whether Mr. Marshall himself had any connection with either McKelvey or Favour as their counsel?

Mr. BARNETT. So far as I know, he had none. I never heard his name mentioned as counsel for them.

Mr. CARLIN. Why was it you did not see Mr. Marshall about the indictment?

Mr. BARNETT. I had not taken the matter up in the first place myself, and when I went down it was at the request of Mr. Bright, who told me that he had been talking with Mr. Walker about the matter, because Mr. Walker had been appointed as a special deputy and instructed to take these cases up, for the reason that Mr. Marshall was disqualified to take them up, having been a former partner in the firm of O'Gorman, Battle & Vandever. That is only hearsay. Mr. Bright told me that.

Mr. CARLIN. My question was why did you not take the matter up direct with Mr. Marshall?

Mr. BARNETT. I had not any connection with the matter when it was first taken up in that office, and I merely went with Mr. Bright at his request to see Mr. Walker. As a matter of fact, my connection with Mr. Bright's business was on the civil side. He was finding from time to time, as he went over the minutes and records of the

company, certain matters that he believed were criminal and were the proper basis of indictments. From time to time I did what I could to help him with some of those, but I was only incidentally interested in them. My principal interest was on the civil side.

Mr. CARLIN. The alleged perjury was growing out of the suit on the civil side, was it not?

Mr. BARNETT. Yes, sir. Then I was continually under difficulties in the matter because I did not reside in New York, and I could not get Mr. Bright to retain any regular counsel and keep them. Nearly every time I went on to New York I found that he had new counsel, and I would have to go into the matter again with the new counsel, and the matters dragged on in such way that I finally got rid of it as soon as I thought I could without doing injustice to Mr. Bright.

Mr. NELSON. How did you come to be talking to Mr. Walker rather than to Mr. Marshall?

Mr. BARNETT. As I recall, we were in the post-office building and I think were before one of the judges of the Federal court—Judge Mayer, possibly, and after a continuance of an equity proceeding there Mr. Bright asked me to go with him to see Mr. Walker, whom he had formerly seen in connection with this matter, and I merely went with him.

Mr. NELSON. What did you present in the way of evidence or proof of the perjury?

Mr. BARNETT. As I recall, we had a copy, or the original, of the report made by Messrs. Favours and Demarest to the internal revenue commissioner of the financial standing of the South American Securities Co., and in connection with it had a copy of the account of the South American Securities in a bank in New York, showing the amount of money that had been deposited and the amount checked out, and I think some further accounts showing the business that had been done by the South American Securities Co. during the year for which the report had been made.

Mr. NELSON. Did Mr. Walker go over those and comment upon the testimony or the probable strength of it?

Mr. BARNETT. As I recall, he had the papers all before him and spoke of them, but did not manifest much interest in them.

Mr. NELSON. They previously had had an opportunity to look over these papers?

Mr. BARNETT. I do not know.

Mr. NELSON. This, then, so far as you know, was the first time the matter was presented to him?

Mr. BARNETT. So far as I know it was, and I can not recall that anything was said at that time to indicate that he had seen the papers before. The matter was not a matter of first impression with him, however, when I went there. He had heard of it before, but I do not know to what extent.

Mr. NELSON. From what source did he probably hear of it?

Mr. BARNETT. I presume only from Mr. Bright.

Mr. NELSON. The point I am getting at is whether he passed it off apparently from a conclusion as to insufficiency of proof, or whether he had already looked over matters and had come to a conclusion that the case could not be successfully prosecuted.

Mr. BARNETT. I do not think he had come to a conclusion at the time I was there from an examination of the papers, for the reason that he was asking further questions about it.

Mr. NELSON. Did you have any subsequent talk with him or anyone in the district attorney's office about the case?

Mr. BARNETT. I can recall distinctly seeing him only once. I might have been there a second time, or might have been there once before this time, which I recall distinctly, but I am not sure about that.

Mr. NELSON. In that conversation did he say anything about taking the matter up with Mr. Marshall, who was his chief?

Mr. BARNETT. I think he mentioned Mr. Marshall, yes, sir; but I would not be positive as to that.

Mr. NELSON. In what connection did he mention him?

Mr. BARNETT. I think he mentioned Mr. Marshall as his principal, as his chief in the matter, but I will not be positive as to that.

Mr. NELSON. You do not know whether he, then, as a matter of fact, decided this case of his own discretion or whether he took it up with Mr. Marshall?

Mr. BARNETT. No, sir; I do not. The case was a matter that was a mere incidental matter with me. I made no memorandum; I cannot recall that I ever wrote a word in connection with the case, and I merely went with Mr. Bright at that time more to tell Mr. Walker what I knew about the matter and to try to get him interested in it, than having any other purpose.

Mr. NELSON. There were two persons involved, were there not?

Mr. BARNETT. Yes, sir; Mr. Alpheus H. Favour, who at that time, or at least shortly before that—and I think at that time—was the partner of John Jay McKelvey, and Charles R. Demarest, who had been in or connected with the office of McKelvey & Favour and had been a director and official in one or more of these three companies from time to time.

Mr. NELSON. In the discussion with Mr. Walker you considered an indictment against both of these gentlemen?

Mr. BARNETT. Yes, sir.

Mr. CARLIN. That seems to be all, Mr. Barnett; you may be excused.

(The witness thereupon was excused.)

TESTIMONY OF MR. JOHN E. WALKER, OF NEW YORK CITY.

(The witness was duly sworn by Mr. Russell, clerk of the subcommittee.)

Mr. CARLIN. Will you give the reporter your name, please?

Mr. WALKER. My name is John E. Walker; I reside at 420 West One hundred and sixteenth Street, New York City. I am at the present time a special assistant to the United States attorney. I have been such since the 1st day of November, 1915. I was a regular assistant in the office of the United States attorney for the southern district of New York from some date in the month of September 1911, up to the 1st of November, 1915, when my designation was changed by the Attorney General.

Mr. CARLIN. Were you appointed to office by Mr. Marshall?

Mr. WALKER. No; I was not. I was appointed under the previous administration.

Mr. CARLIN. What are your duties as special assistant?

Mr. WALKER. My duties have not changed substantially from the time when I was a regular assistant. It was brought about, I understand, because the salary I was drawing as a regular assistant could be divided up among some of the men in the office who were getting too little, and I could be paid out of a different appropriation. I think that was the reason for the change.

Mr. CARLIN. So in effect you simply had a different designation and your duties are the same?

Mr. WALKER. Practically.

Mr. CARLIN. Do you have charge of all indictments found?

Mr. WALKER. No; I can not say that I have charge. From about April, 1912, until the 1st of July, 1913, a period of a little over a year, I was in substantial charge of the criminal bureau; that is, during Mr. Wise's administration. Mr. Dorr was chief of the criminal bureau, but he was very much engrossed in some certain trials, and so, as a matter of fact, the routine work of the administration of the criminal bureau came to me and the inducting of grand juries into the discharge of their duties for that length of time—a little over a year. My first two years in the office I was put on criminal work entirely.

Mr. CARLIN. That means you had the charge of the indictments and matters of that kind?

Mr. WALKER. That is not exactly correct; no. There is one assistant in the office who perhaps has the handling of the calendar and seeing that cases are ready and prepared for the other men, and he calls the calendar in court. That was part of the duties that I had. I presented a great many matters to the grand jury, and likewise did the other assistants.

Mr. CARLIN. Did you have any connection with the indictment against Rae Tanzer?

Mr. WALKER. Not a thing.

Mr. CARLIN. Did you have any connection with the indictment against Lamar and others?

Mr. WALKER. Yes. The first indictment, where he has been convicted and which is now in the Supreme Court, I had. That was found in the summertime of 1913.

Mr. CARLIN. I mean the pending indictment.

Mr. WALKER. No; I had nothing to do with that at all.

Mr. CARLIN. You had no connection with that?

Mr. WALKER. None whatever.

Mr. CARLIN. When you were first designated as special assistant, what was the reason for the designation at that time?

Mr. WALKER. That was last November—November of 1915. As I say, it was simply so that the money I was drawing as regular assistant could be divided up among other men in the office who were getting inadequate pay.

Mr. CARLIN. Did you know anything about the cases against McKelvey and Favour pending in the State courts?

Mr. WALKER. In the month of October, 1913, Mr. Marshall called me to his office and gave to me a letter from the Attorney General, in which I was designated as special assistant to the Attorney Gen-

eral for the purpose of receiving, hearing, and passing upon a complaint which Mr. Charles Bright wanted to make against John Jay McKelvey and Alpheus H. Favour. At the time Mr. Marshall gave that letter to me he said that—bearing in mind now that Mr. Marshall's firm before he became United States attorney was Battle & Marshall, and then Senator O'Gorman came into the firm and it was O'Gorman, Battle & Marshall, and when Mr. Marshall came into office he severed his entire connection with that firm. It turned out, as he said, that before he severed his connection with the firm Mr. Battle had represented in some State court matter some one whose interest might be adverse to Mr. Bright's in this complaint, and Mr. Marshall said, "While I do not know anything about it, and did not know it was in the office, still the fact was that Mr. Battle did appear, I think, for some one in the State courts."

Mr. CARLIN. Did he appear as counsel for the defense in these cases in the State courts?

Mr. WALKER. We have to get our story chronologically. I believe there was some application made to the magistrate in which Mr. Battle appeared, by Mr. Bright, for the recovery of certain import taxes, and that was the transaction where Mr. Battle had appeared up to that time. Mr. Marshall did not know a thing about it while the thing was in progress, and for that reason he did not feel as if he wanted to take up the case in his official capacity.

Mr. CARLIN. After that time did the firm continue to represent McKelvey & Favour?

Mr. WALKER. Mr. Battle, I believe, did represent Mr. Favour, who afterwards was indicted in the State courts, charged with some statutory offense with respect to making a return to the State comptroller.

Mr. CARLIN. An indictment was sought in the Federal court against McKelvey? Was that the case?

Mr. WALKER. That is my transaction.

Mr. CARLIN. At that time Mr. Battle was appearing for Favour in the State courts?

Mr. WALKER. Mark you, the indictment in the State court was some time after.

Mr. CARLIN. Some time after what?

Mr. WALKER. Some time after this month of October, 1913, when this matter was first referred to me.

Mr. CARLIN. Mr. Battle was appearing as the counsel for Favour during the previous time when Mr. Bright was attempting to get you to indict his partner, Mr. McKelvey?

Mr. WALKER. I believe that is correct.

Mr. CARLIN. It was for these reasons that the Attorney General designated you to look into the matter relating to McKelvey, because of this connection of Mr. Marshall's firm with the matter?

Mr. WALKER. That is my understanding of it.

Mr. CARLIN. You did take charge of that investigation?

Mr. WALKER. I did.

Mr. CARLIN. Of course, you were unhampered by any instructions from Mr. Marshall or anybody else?

Mr. WALKER. I never spoke to Mr. Marshall, nor did he to me, about the matter after the day he gave me this letter of designation. I made my report directly to the Attorney General.

Mr. CARLIN. Mr. Bright's counsel did consult with you about the indictment of McKelvey?

Mr. WALKER. Yes. After this designation was given to me Mr. Bright came in to see me and I told him I had been designated by the Attorney General as special assistant to the Attorney General for the purpose of receiving and considering this complaint. I think I told him the reason why Mr. Marshall did not want to take it up in his official capacity—for the reason which I have indicated here. Then, Mr. Bright was in a number of times and said he would bring his papers back, etc.; and the gentleman—Mr. Barnett—I remember, came in once with him, and I think Mr. Barnett stated that he had been acting for Mr. Bright in some proceedings before the bar association for the disbarment of Mr. McKelvey and Mr. Favour. I think it was stated at that time that quite a number of papers which might tend to show this perjury were with the bar association. The day Mr. Barnett was in I do not think the documents—this is my memory now, although I may be in error—were shown to me at all. It was just a general conversation and I do not think any of the documents were shown to me. I think Mr. Barnett's memory is correct that I stated that perjury is a very difficult crime to prove. At that time the conversation related not—if my memory is right now—to false and fraudulent corporate-tax return to the collector of internal revenue, but to certain alleged false and perjurious statements contained in certain affidavits filed by McKelvey and Favour in the equity suit then pending in the United States court. That was the first matter that was addressed to my attention.

Mr. CARLIN. What was the second one?

Mr. WALKER. Later on Mr. Bright came in, and I said, "Mr. Bright, I want you to point out in these affidavits the statements which you maintain are false and perjurious and what the evidence of the perjury is," and I had them taken down stenographically, and later on made report to the Attorney General in writing, in substance, that in my opinion, so far as that charge was concerned, it could not be substantiated. Later on my designation was increased—I think this was in the month of December, 1914—to take this complaint in regard to the corporate-tax return, and that was addressed to Mr. Favour and Mr. Demarest. The first designation had nothing to do with Mr. Demarest. It appeared that Mr. Favour and Mr. Demarest, as corporate officers of the South American Securities Co., had sworn to and filed a corporate-tax return for the South American Securities Co. I think it was for the year 1910, but I am not positive about the year. It was there stated that the corporation was not engaged in business and that it had received no income. It was claimed that both those statements were false. At that time or by that time Mr. Favour had been indicted in the State court and I obtained from the State district attorney certain books and papers. For example, I think there were two pass books, with two different banks, and some canceled checks, and some other papers which had been utilized in the procuring of the indictment in the State court, and which perhaps would show there had been an offense against the Federal law.

Mr. NELSON. What was the indictment in the State court?

Mr. WALKER. For making false corporate-tax returns to the State comptroller.

Mr. NELSON. The same thing?

Mr. WALKER. Substantially.

Mr. CARLIN. One offense was against the Federal Government, and that offense was against the State government?

Mr. WALKER. Yes. I presented that matter to the grand jury. I had various witnesses, and after talking with Mr. Bright went into it with considerable care, presented the matter to the grand jury, and Mr. Bright appeared before the grand jury, but a true bill was not found.

Mr. CARLIN. Was "not a true bill" found? Did they find on the indictment "not a true bill"?

Mr. WALKER. No. As a matter of fact, I drew an indictment, but it was never presented to them at all. That is our usual way there. More than half the time in my experience a matter will be presented to the grand jury, and the jury will vote whether there shall be a bill or not, and then if a bill is voted, we prepare the indictment.

Mr. CARLIN. In this case was a vote ever taken by the grand jury?

Mr. WALKER. Oh, yes, indeed.

Mr. CARLIN. They voted "not a true bill"?

Mr. WALKER. Yes; yes, indeed. That was in, I think, February, 1915.

Mr. CARLIN. Who summed up the case before the grand jury?

Mr. WALKER. No one did.

Mr. CARLIN. Why did you lay the evidence before the grand jury?

Mr. WALKER. For two reasons: I corresponded with the Attorney General about it and had given him the result of my investigation, and it appeared there was some evidence tending to show that this concern had been engaged in business. What "engaged in business" is within that statute may be a debatable legal proposition, but there were certain facts which I thought perhaps should be presented to the grand jury. The other statement, that there had been no income, was probably incorrect at least; that is, I could find five hundred and twenty-odd dollars which seemed to me was income, and there was no getting away from that fact. Mr. Bright went on to say there had been income in very much larger sums.

Mr. CARLIN. That they had perjured themselves so far as the \$520 was concerned, so far as you saw it?

Mr. WALKER. That was an untrue statement, in my opinion.

Mr. CARLIN. The statement was sworn to, was it not?

Mr. WALKER. The statement was sworn to; yes, sir.

Mr. CARLIN. If it was anything, it was perjury, was it not?

Mr. WALKER. Not necessarily. You must bear in mind that that statute has the word "knowingly" in there.

Mr. CARLIN. If any offense was committed—

Mr. WALKER (interrupting). If any offense, it was an offense of making a false return under the corporate tax law, section 38. It is not under the general perjury statute.

Mr. CARLIN. Then you did find that return was false, so far as that amount of money was concerned?

Mr. WALKER. False in fact.

Mr. CARLIN. With that belief, you presented the evidence to the grand jury?

Mr. WALKER. I did; yes.

Mr. CARLIN. Is it not usual, when the district attorney's office wants an indictment, for you—that is, either the district attorney or his assistants—to sum up the case before the grand jury?

Mr. WALKER. I can only speak of my own knowledge of matters I have presented. I do not recall that I personally have ever summed up a case that I presented to the grand jury. My usual procedure is this: When I have a matter to present to the grand jury I advise them, first, that every offense against the laws of the United States must be based upon a statute, and I uniformly read the statute to them so they will see what the possible evidence is based upon. Then in a very summary way I will tell them about what I expect to bring before them in the way of evidence, not in detail, but in a very summary way. I proceed to call my witnesses, and after I have called my witnesses, I retire, and the grand jury considers it. There is a bell there, and we are out in an outer room, and when they have acted, they punch the bell and we go again, and they tell us whether there has been an indictment voted or not.

Mr. CARLIN. Is it or not the usual practice for the district attorney to sum up before the grand jury, or for some one of his assistants to sum up?

Mr. WALKER. I can not say that I know that it is the usual practice.

Mr. CARLIN. Can you say that you know it is not?

Mr. WALKER. I do not recall that I have ever known of its being done.

Mr. CARLIN. What is that?

Mr. WALKER. I do not recall that I individually have known of it being done.

Mr. CARLIN. How long were you in charge of matters of that sort?

Mr. WALKER. Oh, for nearly two years.

Mr. CARLIN. Then, it was not the practice while you had charge of grand jury matters to sum up before the grand jury?

Mr. WALKER. It was not my practice, and I do not know that it was the practice of any other man in the office at that time.

Mr. CARLIN. If it had been the practice, would not you have known it?

Mr. WALKER. I think I would.

Mr. CARLIN. Therefore, do you conclude it was not the practice?

Mr. WALKER. I think the probability is that in 90 per cent of the cases it was not done.

Mr. CARLIN. Do you think the probability is that in 10 per cent of the cases it was done?

Mr. WALKER. I will answer in this way: I never summed up, and I have never been present before the grand jury when any other assistant has been presenting a case when the other assistant has summed up. That is all I can say.

Mr. CARLIN. If the practice had been to sum up, would not you have known it?

Mr. WALKER. Yes; I think so.

Mr. CARLIN. Therefore, not knowing of any summing up, is it not a fair inference that it did not take place?

Mr. WALKER. I suppose you may say it is a fair inference; yes.

Mr. CARLIN. You do not know of any percentage of cases that were summed up while you had charge during those two years?

Mr. WALKER. I can not say whether any case was. I do not know of my own knowledge of any. I will not say that some other assistants did not, because I would not be there all the time by any means.

Mr. CARLIN. It was not your practice to sum up?

Mr. WALKER. It was not my practice to sum up.

Mr. CARLIN. You were in charge of the bureau?

Mr. WALKER. That is not an entirely correct statement. I have indicated in what manner I was.

Mr. CARLIN. I do not care just how you were. You were in charge of the bureau at one time?

Mr. WALKER. Mr. Dorr was in charge of the bureau. He was the chief assistant in the criminal bureau. There is no doubt of that, but he was engaged in certain trials that occupied his entire attention, and I was handling the calendar of the court and was inducting grand juries into the discharge of their duties.

Mr. CARLIN. When he was engaged you were in charge?

Mr. WALKER. Yes.

Mr. CARLIN. How long were you in charge?

Mr. WALKER. That was about a year—just a little over a year. It began in the springtime of 1912 and continued until the end of June, 1913.

Mr. CARLIN. If it had been the practice to sum up during the year in which you were in charge, you certainly would have known it?

Mr. WALKER. If it had been the uniform practice I would have known it, but I can not say that it was the uniform practice.

Mr. CARLIN. You can not say that it was the practice at all, can you?

Mr. WALKER. No.

Mr. CARLIN. Again I ask you, was it the practice or not the practice?

Mr. WALKER. So far as I know it was not the practice during that time.

Mr. CARLIN. As far as you believe, was it the practice?

Mr. WALKER. As far as I believe, it was not.

Mr. CARLIN. Do you approve of the practice of summing up before a grand jury?

Mr. WALKER. I see no objection to it.

Mr. CARLIN. In this particular case of Favour, you had reached the conclusion that there was probable cause of guilt?

Mr. WALKER. There were facts making the presentation of the matter to the grand jury necessary.

Mr. CARLIN. All you did was to send the witnesses into the grand jury room, and then your duty was discharged?

Mr. WALKER. I interrogated them.

Mr. CARLIN. You did interrogate them?

Mr. WALKER. Yes.

Mr. CARLIN. When you finished interrogating them there the matter dropped with you?

Mr. WALKER. And the grand jurors interrogated them, too.

Mr. CARLIN. You never asked the grand jury for an indictment in that case?

Mr. WALKER. I said, "There is the evidence, gentlemen. If you think an offense has been committed under this statute, find a true bill; if you do not think so, don't."

Mr. CARLIN. That is as far as you went?

Mr. WALKER. Yes.

Mr. CARLIN. After that did Mr. Bright call to see you again?

Mr. WALKER. I don't remember whether he did or not. Along about that time Mr. Bright was here in Washington, and he was staying here away from the jurisdiction of New York State, because of this order of arrest in this civil matter in the State courts. As a matter of fact, I subpoenaed him to come before the grand jury on that matter, and gave him to understand that I would afford protection to him if he were arrested while under that subpoena. I think that he came back to Washington immediately after testifying, and the last time I saw Mr. Bright was some time last spring, either in April or May, when he was in the corridor of the building, and the equity case in the United States court was then being tried before Judge Augustus Hand, and he was there at that time. I think that is the last time I saw him.

Mr. CARLIN. Is that the only time you have seen him since the grand jury's action?

Mr. WALKER. I think he came into my office once afterwards to get some papers, or something.

Mr. CARLIN. Has not he urged you more than once to use your offices to procure an indictment against Favour?

Mr. WALKER. Oh, yes; he has urged and urged and urged. There is no doubt about that. He is a good urger, all right.

Mr. CARLIN. Your position was that the grand jury having once refused, it ought not to be tried before them again?

Mr. WALKER. Yes; and as a matter of fact, the statute has run so far as that transaction is concerned. But here is a curious thing: Whether it was for the year 1910 or 1909, I do not remember, but two years after that Bright or one of his men put in a return indetical with the ones previously put in, and if one was false the other was false.

Mr. CARLIN. You had convinced yourself that the one was false?

Mr. WALKER. False in fact. I think it was false in two respects: False in fact, namely, when they said they had not been engaged in business. I think within the meaning of the phrase of the statute this concern had been engaged in business, and there were two items—

Mr. GARD (interposing). And that was a matter of statutory interpretation rather than perjury, was it not?

Mr. WALKER. Yes. As I say, if the indictment had been returned there and trial came on, I am not at all sure that when all the facts, as I have stated them to you, were presented that the court would not have been called upon of necessity to direct a verdict of acquittal. I was very strongly inclined to that idea.

Mr. CARLIN. Then, there was no reason to present it to the grand jury at all?

Mr. WALKER. That is not true entirely, by any means. I do not think I should—

Mr. GARD (interposing). Presenting it to the grand jury would be for the purpose of obtaining the evidence to see what the facts were?

Mr. WALKER. Yes.

Mr. GARD. I understand also in this investigation that Mr. Bright appeared as a witness?

Mr. WALKER. He did, before the grand jury.

Mr. GARD. Did anyone else testify, do you remember? Were there any other witnesses except Mr. Bright?

Mr. WALKER. I think there were some people from the bank, or one or two banks, to identify certain bank accounts, and I think there was one from the internal-revenue office.

Mr. GARD. How long had you had the matter under investigation or consideration before it was finally presented to the grand jury?

Mr. WALKER. I think a month or six weeks.

Mr. GARD. Your investigation was entirely at the direction of the Attorney General?

Mr. WALKER. Absolutely. Mr. Marshall had not a thing to do with it.

Mr. GARD. The district attorney, Mr. Marshall, had nothing to do with it?

Mr. WALKER. Nothing whatever.

Mr. GARD. And as the result of that consideration and investigation you did present the matter to the grand jury?

Mr. WALKER. I did.

Mr. GARD. Mr. Bright appeared and testified?

Mr. WALKER. He did.

Mr. GARD. Other persons appeared and testified?

Mr. WALKER. They did.

Mr. GARD. And the grand jury voted not to return a bill of indictment?

Mr. WALKER. That is correct.

Mr. NELSON. What became of the indictment in the State court?

Mr. WALKER. I do not know whether any disposition has been made of it or not. I know—when I say “I know,” it is hearsay information to me—that they obtained an inspection of the minutes of the grand jury, and I believe they made a motion to have the State court indictment quashed because of insufficient evidence before the grand jury. That motion was made, I am quite sure, but whether it was ever argued and what disposition was made of it, I do not know.

Mr. NELSON. Inspection of the grand-jury minutes in this case where you were acting?

Mr. WALKER. No; in the State court. You see, Mr. Favour was indicted in the State court.

Mr. NELSON. Mr. Walker, do you know anything about the case of United States against Silva?

Mr. WALKER. Oh, yes. George Silva was an importer.

Mr. NELSON. What was that case?

Mr. WALKER. George Silva was an officer of a New York corporation known as Sciami & Co., and there was a man named Henry Bloomfield Sciami, who always lived in Paris and who still lives there, who was an officer of a French corporation. These two corporations were in one sense identical; that is, it was the same business.

Mr. CARLIN. There is a call of the House; we will return as quickly as possible.

(Thereupon, at 3.35 o'clock p. m., to answer a call of the House, a recess was taken until 4.05 o'clock p. m.)

Mr. CARLIN. Can you tell us who were the counsel in the Silva case?

Mr. WALKER. I do not believe that I know, personally; but I know about it in a general way. I think Mr. Eli Newman was the attorney of record in some of the prosecutions and also in some of the civil suits which were brought.

Mr. CARLIN. Who represented the defense?

Mr. WALKER. Mr. Eli Newman was the attorney of record for Mr. Silva. There were some counsel in the case, too, and, I think, Mr. Isaac H. Levy, who was connected with the firm of O'Gorman, Battle & Vandever, appeared in behalf of Mr. Silva as well.

Mr. CARLIN. What was the judgment in that case, if you remember?

Mr. WALKER. There was no judgment. The civil cases were settled for, I think, about \$111,000, and then there were some prosecutions against Mr. Silva under the customs laws, and likewise for filing false corporation tax returns, and he plead guilty to those infractions, and, I think, a fine was imposed upon him and that he was given 30 days on the customs indictment.

Mr. CARLIN. Are you sure of that, sure that he was sent to prison?

Mr. WALKER. I am quite sure.

Mr. CARLIN. What was the amount of the Government's claim in the civil suit?

Mr. WALKER. I do not remember the amount of the claim. I think there were two suits—as there usually are. One is a suit for the alleged balance of duty, and another suit for the value, as we call it, under the statute.

Mr. CARLIN. You do not remember the amount?

Mr. WALKER. No; I do not remember the amount. I think, perhaps, the face of the amount of the claim was for about \$500,000.

Mr. CARLIN. And settled for \$111,000?

Mr. WALKER. Something like that; yes.

(The witness was thereupon excused.)

(Thereupon, at 4.10 o'clock p. m., the committee adjourned.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES.

Washington, D. C., Friday, April 7, 1916.

The subcommittee met, pursuant to notice, at 5 o'clock p. m.

Present: Hon. Warren Gard (acting chairman), and Hon. John M. Nelson.

TESTIMONY OF MR. ROBERT Y. SLATER, OF PHILADELPHIA.

(The witness was duly sworn by Mr. Russell, clerk of the subcommittee.)

Mr. NELSON. Will you give the reporter your name?

Mr. SLATER. Robert Y. Slater.

Mr. NELSON. Your address?

Mr. SLATER. The Walton Hotel, Philadelphia.

Mr. NELSON. Your occupation?

Mr. SLATER. Securities.

Mr. NELSON. Mr. Slater, the committee have been informed that you have some knowledge of the case of The United States versus Julius Strauss in the matter of the importation of laces. Do you know Mr. Strauss?

Mr. SLATER. I do.

Mr. NELSON. State how you came to know anything of that matter? When was it called to your attention?

Mr. SLATER. I had been manager for a manufacturing company in New York City which purchased a good deal of lace from Julius Strauss. I had met him in that way.

Mr. NELSON. What was the nature of his business?

Mr. SLATER. He was an importer of Austrian laces called "Austrian Irish lace." It was really an imitation of the Irish lace, which was made in Austria.

Mr. NELSON. When did you first come to know Mr. Strauss or to know of him?

Mr. SLATER. I first knew of him, I think, about five or six years ago.

Mr. NELSON. In what business was he engaged then?

Mr. SLATER. Importing laces from Austria.

Mr. NELSON. You had no knowledge of his previous business?

Mr. SLATER. Not at that time.

Mr. NELSON. Have you since learned what he was doing before he had been an importer of laces?

Mr. SLATER. I think he was in business in Toledo, Ohio, some years ago.

Mr. NELSON. What was his business then?

Mr. SLATER. Merchandising of some description; I do not know exactly what.

Mr. NELSON. You personally did not know him then?

Mr. SLATER. No; I did not know him then.

Mr. NELSON. How did you come to know him in the lace business?

Mr. SLATER. We purchased materials from him, laces from him—the firm that I was associated with at that time?

Mr. NELSON. Will you kindly now continue as to how you first came to know something of his importation of laces and what you have to testify in this case?

Mr. SLATER. I understood that Mr. Strauss had a contract with the Austrian Government or an association which was conducted by the Austrian Government, manufacturing Austrian Irish lace, for the exclusive selling rights in the United States.

Mr. NELSON. With whom did he have that contract?

Mr. SLATER. With the association in the Austrian Government.

Mr. NELSON. Do you know the nature of the contract?

Mr. SLATER. I do not know the nature of the contract; no.

Mr. NELSON. Do you know how he came to get that contract?

Mr. SLATER. No; I do not know that.

Mr. NELSON. When did you first come in contact with Mr. Strauss with reference to the matter of delinquency in payment of customs?

Mr. SLATER. I think it was some time either the latter part of September or first of October, if I remember correctly, 1913.

Mr. NELSON. How did it come to your knowledge?

Mr. SLATER. I happened to go in his office at 1200 Broadway one morning, and on the elevator going up at the same time with me were two gentlemen, inquiring for Mr. Strauss, who got off at Mr. Strauss's floor. They entered his place of business at the same time I did. One was a United States marshal, and the other, I think, an assistant attorney in the United States attorney's office. They had and served on Julius Strauss and Abraham M. Ackerman an order from one of the Federal judges in New York to produce both Julius Strauss and Abraham M. Ackerman at the Federal court, together with all their books and papers and contracts pertaining to their business. Mr. Strauss, when he got this summons, handed it to me to read.

Mr. NELSON. You were in the room then?

Mr. SLATER. I was in the room; yes, sir.

Mr. NELSON. What did he say to you?

Mr. SLATER. He was very much disturbed about it. He could not say much of anything for a few minutes. He just threw the paper for me to read.

Mr. NELSON. You gathered from the paper what you have stated?

Mr. SLATER. Yes; I read the paper. It was an order from the courts as I have stated.

Mr. NELSON. State the conversation you had with him there or that anyone had with him there, and the circumstances that occurred as you recall them.

Mr. SLATER. The gentlemen who served the papers were in a very big hurry to take both Mr. Ackerman and Mr. Strauss to the court with them and became insistent that there be no delay, that these books and papers that this court order called for be produced at once, and on account of a minute or two of delay they called up, or the attorney called up, some place down town—I suppose the district attorney's office—for the purpose of hurrying Strauss and Ackerman or to arrest them or something. Finally, I told Mr. Strauss and Mr. Ackerman both, after I had glanced over this order, that it was a Federal order for their arrest apparently and for all of their books and papers that the order called for, and the quickest thing they could do would be to get them together and go. So they went to the other side of the room, where their bookkeeper and books were, and commenced to get them out.

In the meantime Mr. Strauss came back and undertook to get his lawyer on the telephone, a Mr. McLaughlin, of McLaughlin & Stern, or Stern & McLaughlin, I forget which comes first. Not being able to do so, he asked me if I knew anyone who could give them quick advice on the subject. I told him I did not know a lawyer there that I could get at once, but I had a friend stopping at the Vanderbilt Hotel who might be somewhat more or less familiar with the routine of such work, and he asked me to phone for him, which I did. He came over—Mr. John W. Clifton.

Mr. NELSON. Does he live in Washington or in New York?

Mr. SLATER. I think he has an office here in the Southern Building or the Woodward Building, I will not be sure which; but he has spent considerable time in New York, and lived at the Vanderbilt Hotel.

Mr. NELSON. Has he been in any way connected with the customs service?

Mr. SLATER. Not that I know of.

Mr. NELSON. How did he come to have special knowledge?

Mr. SLATER. I thought he might have in view of the fact that he lived in Washington and being familiar more or less with the different Government departments; but I didn't know that he had any special knowledge at the time I called him.

Mr. NELSON. You suggested that they call him?

Mr. SLATER. I called him.

Mr. NELSON. Oh, you called him?

Mr. SLATER. Yes.

Mr. NELSON. What happened then?

Mr. SLATER. He came over. I handed him the order to read, and he immediately called up either some law firm or the assistant district attorney that had the case in hand, and then he spoke for two or three minutes maybe, and called the attorney who came with the marshal to serve the papers to the phone, and then they said they could take their time. They finally got the books together, and Mr. Ackerman went with Mr. Clifton and the attorney and the marshal and the books to the Federal court, I think. They did not take Mr. Strauss with them.

Mr. NELSON. What did Mr. Strauss say to you, if anything, after this had been done?

Mr. SLATER. Mr. Ackerman came back, and I met him that evening—and Mr. Strauss, both.

Mr. NELSON. What was said?

Mr. SLATER. They said that Mr. Clifton had very good standing; that they thought they would have been indicted that day if he had not come into the case.

Mr. GARD. What happened with respect to the office of District Attorney Marshall? Come to that. That is the only thing in which we are interested here. What did District Attorney Marshall have to do with this?

Mr. SLATER. I do not know that he had anything to do with it at all.

Mr. GARD. What?

Mr. SLATER. I do not think he had anything to do with it at all—not that I know of.

Mr. GARD. Pardon me for interrupting your statement, but does your statement go beyond the part where Mr. Clifton appeared for Strauss and Ackerman and, as you say, they were not indicted? Is there anything beyond that that you want to tell this committee. that has to do with the district attorney's office?

Mr. SLATER. I do not know that it has anything to do with the district attorney's office.

Mr. GARD. Did Strauss employ Carstoffer or Marshall or anybody in the district attorney's office and pay them a fee?

Mr. SLATER. Not that I know of.

Mr. GARD. Whom did they employ?

Mr. SLATER. They had their own counsel.

Mr. GARD. Who were they?

Mr. SLATER. McLaughlin & Stern.

Mr. GARD. McLaughlin & Stern later appeared after Mr. Clifton appeared?

Mr. SLATER. They went together.

Mr. GARD. Clifton and McLaughlin and Stern all went together?

Mr. SLATER. Clifton and McLaughlin. Mr. Stern was not there.

Mr. GARD. Do you know anything that would associate the office of Mr. Marshall, the district attorney over there, with anything that was wrong in connection with this matter?

Mr. SLATER. There was apparently money passed for the purpose, as I understood, from both Mr. Clifton and from Mr. Strauss and Mr. Ackerman, of keeping it out of a criminal case and putting it into a civil case.

Mr. GARD. That is what we want to know.

Mr. NELSON. That is what I was leading up to, Judge Gard.

Mr. GARD. Pardon me; go ahead.

Mr. SLATER. Later that same day, or that night, I met Mr. Clifton, and he told me that it was a very serious case; that the men had unquestionably, from the facts in the possession of the district attorney, swindled the Government out of a million dollars or more, and that it was the policy of the administration to prosecute those cases to the limit. He said that for \$10,000 preliminary fee, he could have it put from a criminal case into a civil case.

Mr. NELSON. Clifton said that to you?

Mr. SLATER. Yes.

Mr. NELSON. That if Strauss and Ackerman would pay him \$10,000, he would have it transferred from a criminal to a civil case?

Mr. SLATER. Yes.

Mr. NELSON. What else?

Mr. SLATER. I told him I knew nothing about it; I did not have anything to do with it. If they were guilty of a misdemeanor or a crime or anything of that kind, that I had better leave it alone. I told them. They claimed that the Government was persecuting them, and in view of Mr. Clifton's assertions, my advice to him was to not bother with it, in any way, shape or form.

Mr. NELSON. That was your advice to Mr. Clifton?

Mr. SLATER. Yes; that I would have nothing to do with it. Later I was told by Mr. Clifton that Mr. Strauss and his attorney, Mr. McLaughlin, had come to see him at the Vanderbilt Hotel, and they had made an arrangement by which Mr. Clifton was to get \$7,500. \$3,750 was paid to him in a check of Mr. McLaughlin's, and \$3,750 was paid to him or was to be paid to him when a civil suit was brought and the criminal action dropped.

Mr. NELSON. How was this agreement made?

Mr. SLATER. I do not know.

Mr. NELSON. In writing?

Mr. SLATER. I do not know that; I was not present.

Mr. NELSON. Did he state how it was made?

Mr. SLATER. No; he did not, to me. Later Mr. Strauss told me practically the same thing Mr. Clifton had.

Mr. GARD. Is there anything else?

Mr. SLATER. He was never indicted. Several months later a civil action was brought to recover, I think, \$470,000 or \$480,000, and that has been more than a year ago and I think it stands just that way.

Mr. GARD. Has the case ever been determined?

Mr. SLATER. I think it has never been tried.

Mr. GARD. All that you know or all that you testified to is what Mr. Clifton told you or what Mr. Strauss told you about the payment of \$7,500 to Clifton by Strauss and Ackerman to secure for them immunity from a criminal indictment and in order that a civil suit might be brought instead of a criminal indictment?

Mr. SLATER. That is correct.

Mr. GARD. Was there anything said about what Clifton was to do with this money?

Mr. SLATER. Mr. Clifton said himself that he would have to use it with two or three people, but who he did not mention.

Mr. GARD. He did not say who?

Mr. SLATER. No; he did not mention who it was.

Mr. GARD. What did he say about using the money?

Mr. SLATER. He said it would have to be used with two or three other people.

Mr. GARD. Did he give you the names of any of those people?

Mr. SLATER. No; he gave me no names whatever.

Mr. GARD. Or their positions?

Mr. SLATER. He did not.

Mr. GARD. Nothing except that he said "two or three other people"?

Mr. SLATER. That is all.

Mr. GARD. Whether or not he did use that money for that purpose, I suspect you do not know?

Mr. SLATER. I have no knowledge.

Mr. GARD. You only testify from what Mr. Clifton told you and from what Mr. Strauss told you?

Mr. SLATER. Correct. I did employ Mr. Thomas, Samuel L. Thomas, a couple of months after that, to go and see what was done with the matter, and he went to see Mr. Carstoffer, who had the case in charge, and wrote me a letter and also told me that Mr. Carstoffer said they had a very clear case against them and intended to prosecute them to the limit.

Mr. NELSON. Mr. Carstoffer is whom?

Mr. SLATER. He is assistant district attorney in New York.

Mr. NELSON. What are his relations with Mr. Clifton?

Mr. SLATER. Mr. Clifton told me he was responsible largely for having Mr. Carstoffer appointed—several days previous to this happening.

Mr. NELSON. Did you ascertain in any way whether or not Mr. Marshall was aware of this matter?

Mr. SLATER. Mr. Thomas told me that he had spoken to Mr. Marshall about it; that he had gone several times to see Mr. Carstoffer.

Mr. GARD. Who was Mr. Thomas?

Mr. SLATER. He is a lawyer in New York. He is now employed in Mr. Carstoffer's office over there; he is in the Treasury Department in some way, I believe.

Mr. GARD. That is all I have to ask unless the witness desires to state something else.

Mr. NELSON. Mr. Thomas was your attorney?

Mr. SLATER. Yes.

Mr. NELSON. What was his interest in the matter?

Mr. SLATER. He had no interest outside.

Mr. NELSON. Did he know Mr. Carstoffer?

Mr. SLATER. No; not until he called on him in behalf of this matter.

Mr. NELSON. What is he doing now?

Mr. SLATER. Who—Mr. Thomas?

Mr. NELSON. Yes.

Mr. SLATER. He is in the customs department in some way, but I think he makes his headquarters with Mr. Carstoffer there in New York or works under him. I do not know which it is, but he is in some way connected there as special counsel for the Government in certain matters or certain cases.

Mr. NELSON. Was he in the Government service at the time?

Mr. SLATER. No, sir.

Mr. NELSON. He has since received the position?

Mr. SLATER. He has since received the position; yes.

Mr. NELSON. Have you any knowledge as to how he received that position?

Mr. SLATER. I have none whatever.

Mr. NELSON. Did he have any conversation, within your knowledge, with Mr. Carstoffer, the assistant district attorney, with reference to the actual payment of money?

Mr. SLATER. Oh, no. I think not; I think not.

Mr. NELSON. Is Mr. Clifton an attorney at law?

Mr. SLATER. He was not at that time. I do not know whether he is now or not.

Mr. NELSON. What did you understand he got this money for?

Mr. SLATER. For his influence to keep it from the criminal suit and put it in the civil suit.

Mr. NELSON. Did he tell you directly that is what he was going to do it for?

Mr. SLATER. Yes.

Mr. NELSON. Did he say anything about the amount of money that was necessary?

Mr. SLATER. He said \$10,000 retainer fee.

Mr. GARD. He did not get \$10,000?

Mr. SLATER. No; he got \$7,500.

Mr. NELSON. Do you have any knowledge of the amount of money out of which the United States was defrauded by Strauss?

Mr. SLATER. I have not, only what I was told by Mr. Clifton at the beginning of it, and then of the suit which has been filed by the Government against Strauss in New York. They claim over \$450,000 in that suit.

Mr. NELSON. Did Mr. Clifton tell you or intimate to you whom he would expect to go to see about bringing pressure to bear to have this matter dropped?

Mr. SLATER. He did not give me any names at all, only he claimed to be extremely friendly with Attorney General McReynolds. He said if he could not do it through New York he could bring plenty of pressure to bear that would stop it.

Mr. NELSON. As a matter of fact, your information is that they had a clear case against Mr. Strauss on the criminal side?

Mr. SLATER. The opinion I have is that; yes.

Mr. NELSON. Did Mr. Strauss admit that he was liable to be sent up for undervaluations.

Mr. SLATER. No; he always claimed to be innocent of it; claimed he was being persecuted by the Government.

Mr. NELSON. Your information comes from Clifton and from Thomas?

Mr. SLATER. From Clifton and Thomas; yes.

Mr. NELSON. Just those two?

Mr. SLATER. Yes.

Mr. NELSON. Is there anything else with reference to this matter, within your knowledge, that you think this committee ought to know in order to determine the fact in this case with reference to District Attorney Marshall, whom we are investigating?

Mr. SLATER. I have no knowledge otherwise than what I have given you here.

Mr. HILL. I would like to ask a few questions, if there is no objection?

Mr. GARD. Proceed.

Mr. HILL. Mr. Slater, were you ever called down to the Treasurer's office for any statement about the time they discovered the fraud against the Government? I mean about the time the Department of Justice discovered that?

Mr. SLATER. A special agent from the Treasury Department called on me at my office in the Stock Exchange Building in Philadelphia, I think some time in January, 1914, or thereabouts, and requested that I give them a written statement regarding my knowledge of the Strauss matter. I think the agent's name was Chester; that is the last name, if I remember correctly. I did give such a statement to him and I suppose it is on file in the Treasury Department.

Mr. HILL. A written statement?

Mr. SLATER. A written statement.

Mr. HILL. Was it sworn to or not?

Mr. SLATER. No; it was not sworn to.

Mr. NELSON. May I ask right there, on the question of money, if you have any knowledge of where this committee could ascertain the fact that Mr. Clifton actually received the money?

Mr. SLATER. I was told in Washington later by a lawyer here that Mr. Clifton had shown him a check.

Mr. NELSON. Who was that lawyer?

Mr. SLATER. Mr. Bride—W. W. Bride.

Mr. GARD. Where is Clifton now? Is he in Washington?

Mr. SLATER. I have not the slightest idea. I have not seen him for some few months. He may be.

Mr. HILL. Do you know, after the Government's investigation and after your statement to the Government, whether they ordered anything done with reference to proceeding against Strauss?

Mr. SLATER. I do not know.

Mr. HILL. You do not know that on the 14th day of January, 1914, they ordered the Department of Justice to order the district attorney down there to proceed to collect the lost revenue to the Government?

Mr. SLATER. No; I did not know that. I know there was a bill for them to collect the lost revenue.

Mr. HILL. You spoke of the character of business that this fellow Strauss was engaged in as being the Austrian-Irish lace business.

Mr. SLATER. Yes.

Mr. HILL. And that he had some character of contract with a firm or concern in Austria that was imitating the real Austrian lace and selling it over here.

Mr. SLATER. Yes.

Mr. HILL. And that Strauss had the sole agency for the sale of that lace in this country.

Mr. SLATER. Yes.

Mr. HILL. It was on the importations of this lace that he was making undervaluations and defrauding the Government out of its proper revenues?

Mr. SLATER. Yes.

Mr. HILL. Do you remember of this fellow Strauss having smuggled in a pearl necklace during any of his transactions in the lace business?

Mr. SLATER. I was told so by Clifton.

Mr. HILL. Did you ever know anything of the value of that?

Mr. SLATER. I have no knowledge of that.

Mr. HILL. This firm of Strauss was Julius Strauss & Co. (Inc.), or Julius Strauss (Inc.), or something like that?

Mr. SLATER. Yes; Julius Strauss.

Mr. HILL. Did it include Strauss and Ackerman as the sole owners and proprietors of the company, or do you know?

Mr. SLATER. It did.

Mr. HILL. Did he turn over all his books and documents in connection with his firm to the district attorney's office for the southern district of New York, or do you know about that?

Mr. SLATER. Mr. Ackerman told me that the day they came there the real books were in the hands of an auditor outside of his office.

Mr. HILL. And that they turned over only a part of the books?

Mr. SLATER. Certain accounts that they kept specially for any emergencies.

Mr. HILL. And that those were the books that were turned over?

Mr. SLATER. Yes, sir.

Mr. HILL. Mr. Strauss told you that this man Clifton, or this fixer, or whatever he might be, was to be a go-between to keep him from being criminally indicted?

Mr. SLATER. He did.

Mr. HILL. Did he tell you that he paid him \$7,500?

Mr. SLATER. He told me just what I have stated previously.

Mr. NELSON. You mentioned some attorneys, McLaughlin and Stern?

Mr. SLATER. Yes; of New York.

Mr. NELSON. Do you know some of that firm?

Mr. SLATER. They are attorneys for Strauss.

Mr. NELSON. You know that they were his usual attorneys?

Mr. SLATER. Yes, sir; they were.

Mr. NELSON. Did they act in this matter at all?

Mr. SLATER. Yes, sir; they did.

Mr. NELSON. Did they act with Clifton?

Mr. SLATER. Mr. McLaughlin went with Mr. Clifton and Mr. Ackerman the day the order was served on them, with the books. He was there at the time and went.

Mr. NELSON. Subsequently, in getting this matter dropped, were they active with Mr. Clifton?

Mr. SLATER. I do not know that.

Mr. NELSON. In conversation with Mr. Strauss, did he give any reason why he let Mr. McLaughlin go and took up Mr. Clifton, who was not an attorney?

Mr. SLATER. They did not let McLaughlin and Stern go. They kept them in the case. They were there always in the matter and had absolute charge of it.

Mr. NELSON. What did they have to do? They were the attorneys in the case?

Mr. SLATER. They were the attorneys in the case, yes, for Strauss, and had acted for Strauss for some years.

Mr. HILL. Was it not McLaughlin that paid the first payment of \$3,750 to this fellow Clifton?

Mr. SLATER. I understood so.

Mr. HILL. And didn't he cash that check down here at the Union Trust Co. in Washington?

Mr. SLATER. It was understood it was seen in Washington by Mr. W. W. Bride, to whom he showed it, and I supposed it was deposited in his bank in Washington, wherever he does business.

Mr. NELSON. With reference to Mr. Clifton, how long have you known him?

Mr. SLATER. About six or seven years.

Mr. NELSON. How did he come to have any dealings with the powers that be that would indicate that he could get this matter dropped? Have you any knowledge on that?

Mr. SLATER. That I do not know.

Mr. NELSON. Has he any social relations with the district attorney's office or anyone in the district attorney's office outside of Mr. Carstoffer?

Mr. SLATER. That I would not want to say. He was very closely socially connected with Attorney General McReynolds, and he was in politics. He was acquainted with many of the people—Democrats—in power.

Mr. NELSON. Just in a social and political way?

Mr. SLATER. Yes; in a social and political way.

Mr. HILL. Did he seem to be a man of plenty of means and well dressed?

Mr. SLATER. He always lived very well.

Mr. NELSON. How old a man is he?

Mr. SLATER. I should think about, maybe, 35 or 38.

Mr. HILL. Do you know where he lives here in Washington?

Mr. SLATER. At some club; I do not know the name of it.

Mr. HILL. The University Club, isn't it?

Mr. SLATER. I believe it is.

Mr. HILL. He told you that if he could not get Marshall and the district attorney's office for the southern district of New York he thought he could reach it through the Attorney General?

Mr. SLATER. He did not mention Marshall's name.

Mr. HILL. It had to be the district attorney's office, of course?

Mr. SLATER. Whatever it was; but he did not mention the name.

Mr. HILL. The man he associated with him to do that was Mr. Thomas?

Mr. SLATER. No; Mr. Thomas had nothing to do with Mr. Clifton.

Mr. HILL. Do you know whether he was associated with anybody by the name of Wilson or anybody else that he reached through the district attorney's office in New York?

Mr. SLATER. I have heard him mention Mr. Wilson's name.

Mr. HILL. You do not know who Mr. Wilson was?

Mr. SLATER. No, sir.

Mr. HILL. You do not know his first name?

Mr. SLATER. I do not.

Mr. HILL. But you know Mr. Wilson, the fellow that he went to the district attorney's office through, was a former partner of Mr. Carstoffer?

Mr. SLATER. I have learned so since. I did not know it at the time.

Mr. HILL. It was through him that he reached Carstoffer and the district attorney's office?

Mr. SLATER. I have learned so since.

Mr. HILL. After that, all you know is the Government did order this suit for \$475,000 or \$480,000 to be brought against Strauss for defrauding the Government, and that that suit never was brought on the criminal side at all?

Mr. SLATER. The criminal suit was never brought.

Mr. HILL. It was ordered to be a suit for the recovery of this money, ordered in the district attorney's office, and no criminal action was ever brought against him?

Mr. SLATER. I understand not.

Mr. GARD. There could be only one criminal action, and that is by indictment.

Mr. HILL. I understand that.

Mr. SLATER. I understand not.

Mr. HILL. But for his violation of the internal-revenue laws and statutes of the United States he never was indicted?

Mr. SLATER. I understand not?

Mr. HILL. But he was afterwards sued civilly?

Mr. SLATER. Yes.

Mr. HILL. During the time when these violations of law were discovered and when the Department of Justice got the order herein, which is of record—and I would like the committee to get it and find out about it—what was Strauss doing? Was he under bond, or was he free?

Mr. SLATER. I understand not.

Mr. HILL. Was any effort made to hold the Government secure?

Mr. SLATER. I understand not.

Mr. HILL. Was it not the fact that he was let loose and his property was all dissipated and gone, so far as the Government could find?

Mr. SLATER. I understand so.

Mr. HILL. If they should recover judgment against him now, the chances are they would never receive a penny from it?

Mr. SLATER. I understand so.

Mr. GARD. I do not view these questions as being important. I do not desire to restrict you in your examination, but you, as a lawyer, must know that if we can place any reliance upon this testimony, which would give us any authority to act, it must be the

testimony of Mr. Clifton himself or some one who had these alleged dealings.

Mr. HILL. That is very true, but I want to get it before the committee that Strauss has never been indicted and that he violated the law. It is possible to bring it out in this way, I believe. I want to show, too, that they never recovered any judgment in favor of the Government. In other words, the district attorney's office down there has permitted this man to absolutely escape punishment of any kind. That is the only purpose of it. This man only knows some things, and that is that these "fixers" said they could buy off the Government.

Mr. GARD. I do not think the committee cares to have you use language of that kind.

Mr. HILL. The go-betweens, whoever they might be—the agent or representative. I want to get it as near the truth as I can.

Mr. GARD. It is sufficient. He has gone so far as to say this man told him something. Personally he knows nothing himself, so it would seem to me we should have the actual evidence and not the repetition of hearsay.

Mr. HILL. I think that is correct. I will not take exception to the committee's ruling. I wanted to arrive at it as clearly as we could.

Mr. NELSON. Of course, we will put no credence in hearsay, but there are some strings we can get hold of that perhaps will lead us to the actual facts in the matter, and we would like to have those, of course.

Can you suggest anyone who can testify as to the facts in this case, outside of Mr. Clifton?

Mr. SLATER. I should think Mr. Strauss and Mr. McLaughlin and Mr. Ackerman, so far as their dealings were concerned in it.

Mr. NELSON. Is Mr. Strauss still in business?

Mr. SLATER. I really do not know.

Mr. NELSON. You have had no business relations with him since?

Mr. SLATER. No.

Mr. NELSON. That is all I care to ask.

Mr. GARD. You may be excused, Mr. Slater.

(The witness was thereupon excused.)

TESTIMONY OF MR. CHARLES W. SLATER, OF NEW YORK CITY.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. NELSON. What is your full name?

Mr. SLATER. Charles W. Slater.

Mr. NELSON. What is your occupation?

Mr. SLATER. I am in the investment business.

Mr. NELSON. What is your address?

Mr. SLATER. Seagate, Long Island, N. Y.

Mr. NELSON. Mr. Slater, you have heard your brother testify?

Mr. SLATER. I have.

Mr. NELSON. Will you kindly inform the committee what you know of this matter of Strauss's delinquency in customs, and anything that relates directly or indirectly to Mr. Marshall's office or any of his assistants in the way of negligence or misconduct in office?

Mr. SLATER. Mr. Strauss told me—I think it was the day after the Government officials were at his office to apprehend him and the books—that Mr. Clifton had been of great service to him that day and that he believed he had prevented them from being indicted by coming into the case at that time.

Mr. NELSON. Did he tell you he had persuaded Mr. Clifton to be of service?

Mr. SLATER. He had not entered into any arrangement or agreement with him at that time. It was the day after this, I think, that the arrangement or agreement was made between Clifton and Mr. Strauss and his lawyer, Mr. McLaughlin.

Mr. NELSON. How do you know that?

Mr. SLATER. What Mr. Clifton told me himself in the Vanderbilt Hotel on the evening—

Mr. NELSON (interposing). State the conversation as you recall it.

Mr. SLATER. That it was a very bad case. He had been in the afternoon at the district attorney's office, and it was one of the worst cases they had ever had there, and that there was no doubt in the world that an indictment and conviction could be sustained on the evidence that was in the possession of the district attorney.

Mr. NELSON. With whom had he conversed in the district attorney's office?

Mr. SLATER. The only person that I know of that he could have conversed with was Mr. Carstoffer, who had the case in charge.

Mr. NELSON. Did he so state?

Mr. SLATER. He stated that he had had a conversation with him; yes.

Mr. NELSON. With Mr. Carstoffer?

Mr. SLATER. He did; that he could arrange it so it could be transferred from the criminal indictment in the civil suit upon payment to him of \$10,000 as a starter. I said to him, "If I were you I would not do it; I would not have anything to do with it." He asked me if I would mention it to Strauss, and I told him no; that he could mention it to him himself if he wanted it mentioned. I did see Mr. Strauss, and I did tell him what Mr. Clifton had said to me, but that my advice to Mr. Strauss was not to do it, not to pay any money at all, except to his lawyer that he had in the case. Mr. McLaughlin and Mr. Stern did agree to meet Mr. Clifton at the Vanderbilt Hotel, so Mr. Strauss informed me, and so Mr. Clifton informed me, and that there was a written agreement entered into between Mr. McLaughlin and Mr. Clifton to pay him \$7,500, half of it at that time, and the other half to be paid him when the criminal proceeding was dropped and the civil proceedings instituted. Mr. Strauss and Mr. Ackerman afterwards told me that arrangement had been carried out and that he was to reimburse Mr. McLaughlin for the money that he had paid Mr. Clifton. I said, "That is a large sum of money to pay out, isn't it, for a purpose of that kind if a man was innocent?" "Oh," he said, "It was a mere bagatelle."

Mr. NELSON. Have you knowledge of any other payment made in this case?

Mr. SLATER. No; I have no knowledge of other payments made, but I have heard there has been quite a number of payments made from the time of the first payment.

Mr. NELSON. From whom have you heard that?

Mr. SLATER. I heard it over in New York. It was talked around. You heard it, too, didn't you?

Mr. HILL. I heard some talk.

Mr. SLATER. Of course, I couldn't prove it, and I don't remember the exact detail of it. I didn't have any idea of ever being called on until I was subpoenaed here by this committee. I did not pay much attention to it after that.

Mr. NELSON. Do you know Mr. Clifton?

Mr. SLATER. I do.

Mr. NELSON. How long have you known him?

Mr. SLATER. Possibly seven or eight years.

Mr. NELSON. Do you know whether he has any relationship with the district attorney's office that would give him any special opportunity to influence that office?

Mr. SLATER. I do not know of any personal acquaintance he has with the gentleman except what Mr. Clifton told me himself, which I believe to be true.

Mr. NELSON. What did he say was his relationship?

Mr. SLATER. He said he was very close to a number of people in the district attorney's office down there. I think he said he was very close to Mr. Marshall. I know that he is very close to Mr. Wilson, who is a partner of Mr. Carstoffer's. They have done considerable business together.

Mr. NELSON. What is the relationship of Mr. Wilson?

Mr. SLATER. He was a partner of Mr. Carstoffer.

Mr. NELSON. You say he was close to him—in what way?

Mr. SLATER. Friendship, and I think politics also. I think they are political friends. He said that he was very close with the Attorney General at that time, Mr. McReynolds, which I haven't any doubt he was. I think he told the truth about it. He is a man of ability.

Mr. NELSON. Did he state to you at any time what he did with the money?

Mr. SLATER. He said that he had to use it; that there was several people he had to pay it to in order to bring this about; that he got very little out of it himself.

Mr. NELSON. He gave you no definite information as to what persons received any money?

Mr. SLATER. No; he did not.

Mr. NELSON. Did you ask him?

Mr. SLATER. I did not.

Mr. NELSON. How did he come to talk so freely to you?

Mr. SLATER. My brother brought him in the case in the first place; that is, he called him up and asked him to come over and see if he could give him some information about it or whether he could render some assistance to Mr. Strauss. We were friends; we are friends yet, and have been right along. I presume the reason he talked as freely about it to me was that he wanted me to intercede with Strauss to pay him money so he could do it.

Mr. NELSON. Did he ask you to do that?

Mr. SLATER. He did.

Mr. NELSON. Did you see Mr. Strauss?

Mr. SLATER. I did.

Mr. NELSON. As I understand, you advised him against doing it!

Mr. SLATER. I did; positively advised him against doing it.

Mr. NELSON. But Mr. Strauss told you he had done it notwithstanding?

Mr. SLATER. He gave it to him after I advised him not to give it to him.

Mr. NELSON. That came to you from Mr. Clifton only, or from Mr. Strauss also?

Mr. SLATER. I got my information both from Mr. Clifton and from Mr. Strauss.

Mr. NELSON. Do you know what disposition was made of the criminal matter, the indictment?

Mr. SLATER. I do not think there was ever an indictment run. I know there was a civil suit, which was published extensively in the newspapers at the time, column articles.

Mr. NELSON. Do you know whether that is still pending?

Mr. SLATER. It is still pending.

Mr. NELSON. Have you any knowledge of Mr. Strauss's financial condition now?

Mr. SLATER. I have none personally. I suppose he has plenty of money, although I don't know.

Mr. GARD. I think it is fair to the witness to say that what he has testified here is none of it that what he knows absolutely himself, but what he has been told by other people.

Mr. SLATER. That is all I know, sir; just what I have testified to.

Mr. GARD. I say you know nothing of the facts yourself, but just what you have been told by other people?

Mr. SLATER. All I know is what I have testified to as to the facts in the matter.

Mr. GARD. You do not know yourself of any of these facts, but just what you have been told by this man Clifton and by Strauss?

Mr. SLATER. They were the principals in the whole thing. As to any money reaching anyone else, I do not know that part of it; no.

Mr. GARD. You do not know anything of the facts of your own knowledge? You were not there when any of these things occurred?

Mr. SLATER. No.

Mr. GARD. You were not there when any of the money was paid to Clifton?

Mr. SLATER. No; I was not.

Mr. GARD. Or anything of that kind?

Mr. SLATER. No. I suppose if you wanted any of the facts in the matter you could subpoena those gentlemen, and they might be able to give you more light on it than I could. I merely give you what I know. I am under oath and subpoenaed here by the committee.

Mr. GARD. That is all I care to know.

(The witness was thereupon excused.)

(Whereupon, at 5.50 o'clock p. m., the committee adjourned, subject to the call of the chairman.)

EXHIBIT No. 41—APRIL 24, 1916.

WASHINGTON, D. C., April 19, 1916.

HON. CHARLES C. CARLIN,

*Chairman Subcommittee of the Committee on the Judiciary,
House of Representatives, Washington, D. C.*

MY DEAR SIR: My attention was called to-day to certain false testimony given before your committee on April 7 by Robert Y. Slater and Charles W.

Slater, reflecting upon my professional character and reputation in relation to the case of "United States v. Julius Strauss," investigated and prosecuted by the office of the United States district attorney for the southern district of New York.

Inasmuch as your committee is endeavoring to ascertain the facts in reference to the questions under investigation, I would respectfully request the privilege of appearing before your committee as early as possible, consistent with its convenience, to refute the false and slanderous statements of said Slaters and to assist in eliciting the truth about the Strauss case.

I would also respectfully request that subpoenas be issued for the appearance of the following-named gentlemen who were also mentioned in the testimony of the Slaters and who are cognizant of the facts relating to the Strauss case: Mr. E. Bright Wilson, 149 Broadway, New York; Mr. Leo C. Stern, 15 William Street, New York; Mr. Alonzo McLaughlin, 15 William Street, New York; Mr. Frank E. Carstarphen, Post Office Building, New York; and Mr. William W. Bride, 710 Fourteenth Street, Washington, D. C.

Very respectfully, yours,

JOHN W. CLIFTON.

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Monday, April 24, 1916.

The subcommittee met, pursuant to notice, at 11 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding) and Hon. John M. Nelson.

TESTIMONY OF MR. JOHN W. CLIFTON.

(The witness was duly sworn by Mr. Russell, clerk of the subcommittee.)

MR. CARLIN. Mr. Clifton, I received a letter from you stating that you wanted an opportunity to explain some matters that have been brought out in testimony before this committee.

MR. CLIFTON. Yes, sir.

MR. CARLIN. We will be glad if you will tell the committee just what explanation you have.

MR. CLIFTON. Two witnesses in this case, by the name of Slater, whom I have known several years rather slightly and casually, made some statements that were not true, in which they undertook to reflect on the character of myself and others in connection with a case in New York. I did not wish for that testimony to go unrefuted.

About the early fall, I think, of 1913, I was in New York, as I am a legal resident there and have been since 1911, and I met the Messrs. Slater in my hotel, if I recall, a day or two before this incident arose. They knew I was stopping at the Vanderbilt Hotel, and one morning I was called on the phone by Mr. R. Y. Slater. He asked me if I could not go to 1200 Broadway, to the business house of a Mr. Julius Strauss; that they would like very much to consult me about a law case. I said, "I am busy and haven't the time to go." "Can't you come over here? We want to see you." He very urgently insisted that I come; that they could not come, and that they could not explain why they could not come. Well, I went over at his request and found that Mr. Strauss, to whom he introduced me, had been subpoenaed by officers of the Government to appear with his manager and certain papers, to answer an investigation for alleged undervaluations of customs. He wished to consult me, to know what he should do. I had never heard of Mr. Strauss before; had never heard of his case before; and I looked over the subpoena and dis-

cussed the matter with the officers. It was a case of a character that they conduct very often in New York, I think, in connection with importers.

There was a difference of opinion as to what the market values in Europe were in connection with these particular commodities and the values that had been accepted by the customs appraisers here. For the time being, it was purely a civil question. The Government at that time did not even charge formally that there was any crime committed, so he asked me what to do. He said that he had endeavored to reach his counsel—his local counsel, Messrs. McLaughlin & Stern—and had been unable; that they were out; so I advised him to respond to the subpoena, to let the officers have such papers as they desired, but I suggested to them that they take only such papers as they immediately needed, so as not to completely upset the man's business, which was a customary request, and I asked if I might not call a lawyer friend of mine, a Mr. E. Bright Wilson, of New York, who was formerly a speaker of the house of representatives in Tennessee, where I went to college, and who was a good lawyer and practicing in the Federal courts, and Mr. Strauss told me that I might do that; and I asked him to meet me at the district attorney's office when we got downtown with these clients and with the officers. Meanwhile Mr. McLaughlin—

Mr. CARLIN (interposing). Strauss was the importer?

Mr. CLIFTON. Yes; Strauss was the importer.

Mr. CARLIN. What was the amount of import duty he was charged with owing the Government?

Mr. CLIFTON. The actual loss of revenue that was charged—that he was charged with depriving the Government of—was about \$70,000, I think—between \$70,000 and \$80,000—but under the law, if a suit is brought there are penalties and all which ultimately, in the action that developed, amounted to a great deal more than that, but the undervaluations charged were about \$70,000.

Mr. CARLIN. That suit was finally settled, was it not?

Mr. CLIFTON. No; the investigation continued for nearly a year and a half, and Mr. McLaughlin and Mr. Stern and Mr. Wilson and I worked for days and days and days on the case, going over all sorts of papers and documents and things with the district attorney—assistant district attorney, Mr. Carstarphen—he endeavoring to make out a case as zealously as a person could for the Government, and we likewise endeavoring to establish to the satisfaction of the Government that there was no crime committed, and that there was no ground for a civil action, because it was a perfectly open and legitimate question as to whether any undervaluations had occurred or not. It was a difference of opinion between certain of the Government officials and Mr. Strauss. We endeavored to the best of our ability to establish the fact that Mr. Strauss was guilty of no crime and should not be indicted, and that he had done no injury to the Government, had deprived it of no revenue, and I was myself convinced, and still am convinced, that he had not committed a crime, and that he had not undervalued goods, as the Government had alleged.

Mr. CARLIN. Was a suit brought?

Mr. CLIFTON. A suit was brought.

Mr. CARLIN. For how much?

Mr. CLIFTON. For something like \$400,000, I think.

Mr. CARLIN. Was an indictment found?

Mr. CLIFTON. No; no indictment was found. The assistant district attorney admitted that he did not have evidence upon which to convict, and that therefore he did not feel it was justifiable to indict a man unless he had a case that he could convict him on.

Mr. CARLIN. The counsel you have named were the only counsel in the case?

Mr. CLIFTON. They were the only counsel in the case at that time. Subsequently they had employed an additional lawyer, Mr. Pratt, who was formerly an assistant district attorney in New York—an assistant to Mr. Wise.

Mr. CARLIN. The case has never been tried?

Mr. CLIFTON. No; but the interrogatories are being taken now. The case is still under investigation as a civil case. Now, these men alleged on the stand that there was some agreement or understanding between counsel and Mr. Strauss that we would prevent an indictment from being had, and that we would receive large sums of money if we did that, and then that we would get it transferred to the civil side of the court. There never was any discussion of any such question at all, and it is absolute fiction.

Mr. CARLIN. Is that all the statement you want to make?

Mr. CLIFTON. Well, there are some other questions in this matter. The man stated, for instance, that I was not a lawyer; that I was not admitted to the bar, and that he thought that I might help Mr. Strauss because I knew something about the routine methods of dealing with apartments. If he knew anything about me at all he must have known I was a lawyer or he would not have called me to have his friend consult me, when it was a case in which they were all very apprehensive and did not know anything about what the gravity of the charge was. Not only that, but I was admitted to practice in the Supreme Court of Tennessee in 1907 and the Supreme Court of the United States in 1910, and soon after to the Supreme Court of the District, and I think probably all of those facts were known to them at the time. They stated or alleged that I had Mr. Carstarphen, the assistant district attorney, appointed to office. I had never heard Mr. Carstarphen's name mentioned up to the time this case came up. I did not know him; I did not know the district attorney, and I did not know a single employee of the Government in his office, so I do not like for such allegations and insinuations to be made in connection with a case in which my name is referred to without the opportunity to present the real facts, which you have kindly given me. Now, there were several other questions in which he endeavored to reflect upon some of us, which, for the moment, I do not recall, but Mr. McLaughlin—

Mr. CARLIN (interposing). If you should have any further statement you want to make, you can just send it to the committee in writing.

Mr. CLIFTON. I thank you very much. Mr. McLaughlin, of New York, of the firm of McLaughlin & Stern, is here, and I would like to have you give him an opportunity to make a statement about the case.

Mr. CARLIN. We would be glad to do that later in the day, but Mr. Watson, of the New York Journal, is here, subpoenaed as a wit-

ness, and we will have to go on with him first, and we will take up Mr. McLaughlin later.

Mr. CLIFTON. May I make one more statement?

Mr. CARLIN. Yes.

Mr. CLIFTON. This man refers to me having said something to him about Mr. Strauss smuggling in a pearl necklace. I wish to assert emphatically that I never heard of any such incident before he testified. I never heard that Mr. Strauss had ever bought a pearl necklace or smuggled it or anything else; and I think the whole thing is absolutely false, as many others of the statements made by these men. Thank you very much, Mr. Chairman. Are there any questions that you gentlemen would like to ask me?

Mr. NELSON. You had known Mr. Slater how long before he sent for you or communicated with you in regard to this case?

Mr. CLIFTON. I had met and known them casually, as probably you gentlemen might have, about the Capitol and about the hotels here, for perhaps three or four years, but I had not been in Washington over two or three years at the time this case came up.

Mr. NELSON. What were your relations with them; social or business?

Mr. CLIFTON. They were not social at all.

Mr. NELSON. What were they?

Mr. CLIFTON. They were just casual and purely political, if at all. One way in which I knew them was the fact that I was one of the assistants in the management of a Speaker's campaign—the Speaker of the House of Representatives—and I think I met them in connection with that in some way, but I do not know just how.

Mr. NELSON. How did they know that you were at the hotel?

Mr. CLIFTON. They had been in the hotel or had met me, as I stated before, the day before, or perhaps two days before, and had asked me where I was stopping, incidentally, and that is the way they knew I was at the hotel.

Mr. NELSON. During the four years were you engaged in the practice of the law—during this time that you knew the Slaters?

Mr. CLIFTON. I was engaged in the practice of the law; yes.

Mr. NELSON. With offices in Washington?

Mr. CLIFTON. No; I was not all the time in practice in the District.

Mr. NELSON. Did you have law offices open?

Mr. CLIFTON. I did most of the time; I was practicing in Tennessee.

Mr. NELSON. During that year were you actually practicing law or engaged in something else?

Mr. CLIFTON. Yes; I was practicing law.

Mr. NELSON. Where were your offices?

Mr. CLIFTON. Here.

Mr. NELSON. Were you alone or with some one else?

Mr. CLIFTON. I was practicing alone.

Mr. NELSON. You had never known Mr. Strauss, had you?

Mr. CLIFTON. I had never known him and had never heard of him.

Mr. NELSON. What did Mr. Strauss tell you when you came over, as to the condition of his books and as to the truth of the charge against him?

Mr. CLIFTON. He stated most emphatically that he did not understand just what it was the Government charged him with. He was

like the average civilian, I presume; he had no technical knowledge of law and he did not understand the subpoena; he did not know whether it was a warrant for his arrest, or what.

Mr. NELSON. What did you do in the matter? Did you see Mr. Marshall?

Mr. CLIFTON. I did not.

Mr. NELSON. What did you do?

Mr. CLIFTON. I went with Mr. Ackerman, as manager for Mr. Strauss, and Mr. McLaughlin and Mr. Wilson to call on Mr. Carstarphen, the assistant district attorney in charge of the case. That was the first time I had ever met him.

Mr. NELSON. Were McLaughlin and Wilson attorneys for Mr. Strauss at the time?

Mr. CLIFTON. No; Mr. Wilson was a friend of mine and was practicing in New York, and I was not; and if I was going to be in the case I wished to have a man whom I had know well and whom I knew to be efficient to assist me; and he consented to have me ask Mr. Wilson to come into the case. I had not known Messrs. McLaughlin & Stern up to that time.

Mr. NELSON. There was some testimony here by the Slaters as to the money that was paid. Did you receive any part of \$10,000 for your services?

Mr. CLIFTON. There was never \$10,000 paid in the case to all counsel together.

Mr. NELSON. Well, there were two checks of \$3,750 each.

Mr. CLIFTON. There were not any such checks passed.

Mr. NELSON. That was so testified.

Mr. CLIFTON. There were no such checks passed. I have received up to this time for my services in the case a little over \$2,000, and we have had this investigation now in progress nearly two years and a half.

Mr. NELSON. Did you have any conversation with either of the Slaters with reference to the amount of money that was to be paid for your services in this case?

Mr. CLIFTON. I had only a solicited conversation with them.

Mr. NELSON. What did you say to them about money, or what was the nature of your conversation?

Mr. CLIFTON. I had no conversation with them about desiring any retainer at all; that was entirely a question between the client and myself and his regular counsel.

Mr. NELSON. Did you state to them how much money you received or expected to receive from Mr. Strauss?

Mr. CLIFTON. I did not.

Mr. NELSON. Did you not just say that you had some conversation with them?

Mr. CLIFTON. Yes; I said I had some conversation with them, but I did not say to them what I had received, or what I expected to receive. Now, the conversation was this: It was voluntary on their part. They came to my hotel; I think, it was the night after we had—I had been called into the case, or perhaps the day following, and they told me that this man had a great deal of money, and that he could well afford to pay me a very large fee, but they would rather that I would look to them for my fee; that he was a great friend of theirs, and that they would see that I was hand-

somely remunerated. I declined any such offer. I told them that the case was for Mr. Strauss, and that he and his counsel would have to arrange that, and that was the sum and the substance of any conversation I had with them. Now, they asserted in their testimony that they advised me not to have anything to do with the case, and that they advised Mr. Strauss not to employ me. That is absolutely inconsistent with the first testimony they gave. They asked me into the case, or Mr. R. Y. Slater called me, and he advised Mr. Strauss to employ me in the case, and I went to see him at his solicitation, and Mr. Strauss subsequently told his other counsel of the representation that they had made about my legal ability and of other things that would enable me to be of great service to him.

Mr. NELSON. You stated that you did not know Mr. Carstarphen before you met him then?

Mr. CLIFTON. I did not know him before that time.

Mr. NELSON. You had nothing to do with his appointment?

Mr. CLIFTON. I had not. I did not know he was appointed until I met him.

Mr. NELSON. Were you holding any position with the Government at that time?

Mr. CLIFTON. I was not.

Mr. NELSON. Have you subsequently held any position with the Government?

Mr. CLIFTON. I have not.

Mr. CARLIN. Did you hold one before that time?

Mr. CLIFTON. I have only held one position under the Government in my lifetime, and that was the original reason of my coming to Washington. Senator Taylor, of Tennessee, recommended me to the chairman of the Immigration Commission, Senator Dillingham, to prepare or conduct some research and prepare a digest of the laws and the judicial decisions on the subject of immigration, which I did. That work was completed, perhaps, two years before this matter came up, and, as soon as my duties were concluded—which was more or less of a private investigation that I conducted—I made my report, and my connection with the Government ceased.

Mr. NELSON. Just what did you do as an attorney for Mr. Strauss?

Mr. CLIFTON. Why, you probably can understand that in a business that amounted to \$250,000 a year or so, that perhaps there was accumulated over four or five years a great many papers, documents, and things that might be interrelated in this case. With his other counsel, I made a careful investigation of the state of his books, of his contracts, and of almost all of the phases of the conduct of his business. We met at hearings in the district attorney's office with three or four of the counsel present all of the time, and the district attorney would call upon us for explanations of the different things that his assistants would find in the books and in the papers of Mr. Strauss that he would require an explanation or defense for.

Mr. NELSON. Right there; was there an indictment pending?

Mr. CLIFTON. There was not an indictment pending, unless you would take it that a indictment might pend in any case.

Mr. NELSON. The grand jury found no true bill against him for undervaluation?

Mr. CLIFTON. The grand jury had not.

Mr. NELSON. The matter was pending in the grand-jury room?

Mr. CLIFTON. If I recall, the matter was not presented to the grand jury.

Mr. NELSON. It was not at all?

Mr. CLIFTON. I do not think so. I am not so sure of that.

Mr. NELSON. Is it not your experience that there is an indictment found, and also a civil suit started in most of these cases?

Mr. CLIFTON. Not unless there is a reasonable ground for expecting a conviction. Do you think that a district attorney would be justified in asking for an indictment, unless he felt that he had evidence enough to convict a man? That was the attitude they took in this case.

Mr. NELSON. I am asking you.

Mr. CLIFTON. I beg your pardon for putting the question in that form, but that was the attitude.

Mr. NELSON. I am just trying to get at the facts in the matter.

Mr. CLIFTON. Yes.

Mr. NELSON. Your work as attorney consisted of presenting facts and arguments to this assistant district attorney?

Mr. CLIFTON. Yes. He was investigating this case. His subpoena was for the books and papers of Mr. Strauss and for them personally to appear to answer to the charge that was being brought, that they had undervalued customs. It was not a hearing before the grand jury.

Mr. NELSON. You were there that day before him?

Mr. CLIFTON. I was.

Mr. NELSON. And how many times subsequently?

Mr. CLIFTON. Probably fifteen or twenty times, perhaps, over a period of a year.

Mr. NELSON. And Mr. Wilson was with you each time?

Mr. CLIFTON. He was either with me, or one of the members of this firm of McLaughlin & Stern.

Mr. NELSON. Mr. Carstarphen was considering whether he would bring the matters to the attention of the grand jury?

Mr. CLIFTON. He was considering that question.

Mr. NELSON. And you were there to show that Mr. Strauss was not guilty of any crime?

Mr. CLIFTON. Any crime, or that he was not guilty of any undervaluations, if possible. We were endeavoring to show that—

Mr. NELSON (interposing). What had been done in the way of a civil suit?

Mr. CLIFTON. Nothing at that time, because he had not investigated the case. He had what he thought was a *prima facie* case before he instituted the formal investigation and started this hearing, and we endeavored to obtain a fair and legitimate hearing and investigation of all the facts before the district attorney's office decided to do anything or one thing or another, which I think was a perfectly legitimate thing to ask, because there may be a difference of opinion—

Mr. NELSON (interposing). What was the nature of Mr. Strauss's business?

Mr. CLIFTON. Importer of laces.

Mr. NELSON. Did he have some contracts with Austria as to the kind of laces, and with reference to any advantages that were to be had, such as a monopoly in their sale?

Mr. CLIFTON. I have never seen any such contract, and I do not know of the existence of any such contract, and the Slaters asserted something of that sort, but they did not know it, I am quite certain.

Mr. NELSON. His business was general?

Mr. CLIFTON. Yes.

Mr. NELSON. Buying laces where he could get them?

Mr. CLIFTON. I think he chiefly made a specialty of these Austrian laces, but I think the people who bought laces for him in Austria or sold him laces, probably assembled them wherever they could get them. I do not know what the details of that is, exactly.

Mr. NELSON. You have discussed this matter with the department. Wherein did they find he had undervalued?

Mr. CLIFTON. They asserted there was a difference between the price at which Mr. Strauss obtained the laces in Germany and the current market value in Germany.

Mr. NELSON. Austria or Germany?

Mr. CLIFTON. I mean in Austria, which is a question open to opinion or to discussion. He might have obtained the laces at a little less than somebody else, because he might have bought more laces. I do not think that that question was conclusive on anything or as to anything.

Mr. NELSON. Where are the books of Mr. Strauss now?

Mr. CLIFTON. Part of them, I presume, are in the hands of the district attorney and part of them perhaps in his office.

Mr. NELSON. Is he doing business now in the way of importing lace?

Mr. CLIFTON. I do not think he has done much business. I think he still does some business. I think the war has practically suspended all importations of lace from Austria.

Mr. NELSON. You have never appeared before Mr. Marshall in this matter?

Mr. CLIFTON. Never.

Mr. NELSON. Has Mr. Marshall been present in any of these conversations?

Mr. CLIFTON. He has not.

Mr. NELSON. Has Mr. Carstarphen taken it up with Mr. Marshall?

Mr. CLIFTON. If he has, he has not done it with us present.

Mr. NELSON. He has not so stated?

Mr. CLIFTON. He has not so stated; no.

Mr. NELSON. How do you account for Mr. Slater's testimony, Mr. Clifton?

Mr. CLIFTON. Well, I do not undertake reprisals—

Mr. NELSON (interposing). Have you had any difficulties with him or personal hostility of any kind?

Mr. CLIFTON. I can explain it, I think, only on one presumption, and that is this: That soon after this investigation started and we were retained in the case it seems that the Slaters had had some business partnership or something with Mr. Strauss in connection with some patents on a stenographic machine or something, and they had from time to time over a long period persuaded him to invest, I think, twenty-five or thirty thousand dollars in this

development and these patents, and they had promised, I believe, that they would at some time deliver the patents or deliver the control of the patents to him in consideration of these investments, and they failed to do it, and they broke relations. Now, I am not counsel in that case at all. These gentlemen wished me to assist them in it, but, as a matter of ethics, these men had been good enough to recommend me to Mr. Strauss in this original case, and I did not care to become counsel in a case against them, so I declined to go into it, but Mr. McLaughlin can state that case to you. I think it must be animus that has developed in connection with that, and they subsequently, I presume, from their affiliation with some of those who were not friendly to the district attorney in New York, probably felt that they might make this the medium of assisting in these impeachment proceedings.

Mr. NELSON. What date, so far as the district attorney's office was concerned, could be fixed as the time that they commenced to consider this matter?

Mr. CLIFTON. Why, I think it was some time about September or November of 1913 that I was called into the case.

Mr. NELSON. And it is still pending?

Mr. CLIFTON. And perhaps nearly a year afterwards, after the investigations had been conducted searchingly by the district attorney's office for nearly a year, they developed sufficient evidence, they thought, to bring a civil action.

Mr. NELSON. That is a year after you had begun——

Mr. CLIFTON (interposing). I say that approximately. I do not remember the exact date.

Mr. NELSON. Approximately a year afterwards they brought a civil suit?

Mr. CLIFTON. Yes.

Mr. NELSON. To recover \$470,000?

Mr. CLIFTON. It was seventy some thousand dollars, I think, if I recall, with penalties.

Mr. NELSON. With penalties?

Mr. CLIFTON. Yes; which amounted to about \$450,000.

Mr. NELSON. Did you say November?

Mr. CLIFTON. No; I did not give the date the suit was brought, because I do not recall.

Mr. NELSON. You said the last part of 1913, I think.

Mr. CLIFTON. I say that the investigation started, so far as I was concerned, about September or October of 1913. We were brought into the case then.

Mr. NELSON. Then, when was the civil suit started?

Mr. CLIFTON. I do not remember the date, Judge Nelson, that the suit was started.

Mr. NELSON. Why is there not something being done with the suit?

Mr. CLIFTON. Interrogatories are being taken now. The case is being prepared by counsel on both sides.

Mr. NELSON. As a matter of indictment, the criminal side of it has been dropped?

Mr. CLIFTON. Not necessarily at all. The district attorney had a man come over here from England to testify recently, and he has been giving his testimony. I think the district attorney's office in this

case, if I may say it, has conducted itself with remarkable zeal and energy in the matter. They have pressed us from every possible angle, to try to find some evidence upon which to indict Mr. Strauss, and they just have not been able to find the evidence, and I do not believe it exists.

Mr. CARLIN. Is it not a fact that if you had sufficient evidence to sustain a civil suit, you would certainly have the same evidence to sustain a criminal suit?

Mr. CLIFTON. Yes.

Mr. CARLIN. Because if they have been guilty of withholding goods from the customs appraisers and you can use that in a civil suit, the same facts would establish a violation of the law criminally?

Mr. CLIFTON. I think you are perfectly right, except to this extent: There may be a difference as to what would constitute criminal liability and civil liability.

Mr. CARLIN. There is not any difference under the revenue statutes of the Government. If you withhold goods from the appraisers or give an undervaluation, the Government not only has a right to prosecute you criminally, but to recover against you civilly?

Mr. CLIFTON. Absolutely.

Mr. CARLIN. Therefore if you could sustain the civil suit, the same set of facts would sustain a criminal suit, would they not?

Mr. CLIFTON. Absolutely so; if there is a judgment against them, they have this whole record then to go before the grand jury with; but at the same time I think it shows the right attitude of a district attorney's office to undertake, if possible, to save a man's reputation from criminal prosecution, if he has not been doing anything that was of a criminal nature.

Mr. CARLIN. But you can not say this, can you, Mr. Clifton, in view of the fact that the statute under which they are pursuing their civil remedy is likewise a criminal statute? If a civil remedy exists, certainly a criminal remedy exists?

Mr. CLIFTON. What I meant by that was this: I think that the civil—the beginning of the civil action first—would protect the Government just as much as an indictment would, and if the Government has not sufficient evidence to satisfy a district attorney that he has reasonable hope of a conviction, then is it not fairer for the Government to take a chance of obtaining a judgment in a civil suit, because then the——

Mr. CARLIN (interposing). What is the statute of limitations in these cases?

Mr. CLIFTON. The statute had not run at the time of this—I think it has some time to run yet. I am not quite sure of that.

Mr. CARLIN. How much time has it got to run?

Mr. CLIFTON. I do not remember as to that, to tell you frankly.

Mr. CARLIN. Is not the statute three years in those cases? I am not quite clear about it myself, or is it one year?

Mr. CLIFTON. Perhaps so. I am not clear myself, Mr. Carlin. I do not remember at all.

Mr. NELSON. Is this the only case you have had of that kind, dealing with customs?

Mr. CLIFTON. It is the only one I have had; yes.

Mr. NELSON. You have had no previous experience?

Mr. CLIFTON. Not especially in this line; no.

Mr. NELSON. Have you had any clients since in cases involving customs?

Mr. CLIFTON. Not of that character. I have had some other cases connected with importing business in New York and here, but I have never had anything of this specific nature.

Mr. NELSON. Are you located in New York now?

Mr. CLIFTON. No; I am practicing law here. I am a resident of New York, and I am there a great deal, and in some cases there sometimes.

Mr. NELSON. Did you boast in any way of the amount of fees you had received in this case, or show your check to anybody?

Mr. CLIFTON. I did not.

Mr. NELSON. What?

Mr. CLIFTON. Anyone who knows me would know that is not likely to be true.

Mr. NELSON. Did you show your check to Mr. Bride?

Mr. CLIFTON. I did not. I never received a check for \$10,000, and I could not have shown it in the first place.

Mr. NELSON. The testimony is not as to that amount. I think it was \$5,000, if I remember correctly.

Mr. CLIFTON. No; the testimony, as I understand it, says that I showed Mr. Bride a check for \$10,000.

Mr. NELSON. Did you show him a check for any amount?

Mr. CLIFTON. I did not show him a check for any amount in connection with this case.

Mr. CARLIN. You may stand aside, Mr. Clifton.

TESTIMONY OF MR. WILLIAM W. BRIDE.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. NELSON. You are a lawyer?

Mr. BRIDE. Yes, sir.

Mr. NELSON. Practicing in this city?

Mr. BRIDE. Yes, sir.

Mr. NELSON. I believe you are a neighbor of mine?

Mr. BRIDE. I have been.

Mr. NELSON. In this investigation your name has been mentioned as having seen a check given to Mr. Clifton by Mr. Strauss. Have you any recollection of having seen such a check?

Mr. BRIDE. I never have seen such a check.

Mr. NELSON. For \$500?

Mr. BRIDE. For any sum.

Mr. NELSON. Mr. Clifton has not shown you any check?

Mr. BRIDE. Mr. Clifton and I have been intimate friends since the fall of 1908 or 1909, but he has never shown me any check in connection with this matter.

Mr. NELSON. Has he stated to you at any time that he received substantial fees from Mr. Strauss?

Mr. BRIDE. He never mentioned the case to me. I never knew anything about it at all.

TESTIMONY OF VICTOR A. WATSON, ESQ., OF NEW YORK.

(The witness was thereupon duly sworn by Mr. Russell, clerk of the subcommittee.)

Mr. CARLIN. Will you state your name, occupation, and residence?

Mr. WATSON. Victor A. Watson; newspaper man; 238 William Street, New York City.

Mr. CARLIN. How long have you resided in New York?

Mr. WATSON. All of my life.

Mr. CARLIN. With what paper are you connected?

Mr. WATSON. The New York American.

Mr. CARLIN. How long have you been connected with that paper?

Mr. WATSON. Between 16 and 17 years.

Mr. CARLIN. Did you take up with Mr. H. Snowden Marshall, the district attorney for the southern district of New York, any matter relating to what was claimed to be a fraudulent publication of a New York paper?

Mr. WATSON. I did.

Mr. CARLIN. Will you tell the committee all you know about that transaction?

Mr. WATSON. As a newspaper, we had received complaints from a number of persons who wrote letters to us to the effect that the New York Tribune, a newspaper in New York City, was backing a notorious real-estate swindle. In the course of office business the matter was turned over to me to investigate. I investigated it for some, with the results of such a startling nature that I decided, after consultation with my people, to place the matter before the United States attorney in New York City, Mr. Marshall.

Mr. CARLIN. What year was that?

Mr. WATSON. That was either late in 1904 or early in 1905. I have not looked at any of my papers for a good many months and am a little rusty.

Mr. CARLIN. Do you mean 1914 or 1915?

Mr. WATSON. 1914 or 1915, yes; the latter part of 1914 or the early part of 1915. Mr. Marshall turned me over to an assistant United States attorney, Mr. Stephenson, and in the course of time United States Post-Office Inspectors McQuillan and Schaeffer were assigned to work on the case. They came to me, and we went ahead with our investigations. I presume the best way to make it clear is to offer you some documentary matter that we gathered.

Mr. CARLIN. First, I would be glad if you would tell us what the offense was and what you ascertained with reference to it.

Mr. WATSON. I am not a lawyer, so I would attempt to define what the exact offense was. I had my ideas, which I related to the United States attorney or his assistant.

Mr. CARLIN. What did you relate to the United States attorney?

Mr. WATSON. I told him that the New York Tribune had issued a great amount of literature, in which it urged the people to buy lots at a place called Beechwood, N. J. Their scheme was to sell a lot for approximately \$20 and two lots for approximately \$40. With one lot you had to subscribe to the New York Tribune for six months and with two lots you had to subscribe to the Tribune for one year. They had the contract forms, and in their literature—later I will read the exact phraseology—they said, in effect, that no real-estate

concern could possibly sell this property at such figure if it was purely a matter of real estate business, and that the Tribune was engaged in it purely to build up its circulation, and only because they were willing to cut out all the middlemen's profits and buy vast acreage and contract for roads on an enormous scale, etc., were they able to sell at any such ridiculously low price.

My investigation showed that these pieces of property had a very black record—had been used in a swindle before. Any attorney examining the situation to take title for the Tribune must have found that place was once known as—I am a little bit off in our history, but it was named after one of our last Presidents, whose name began with "G," who came from Jersey.

Mr. NELSON. Perhaps you can recollect from your notes?

Mr. WATSON. Yes; I have it there. He was Vice President to President McKinley—showing the fate of a Vice President.

Mr. NELSON. Nobody remembers Vice Presidents anyway.

Mr. WATSON. At any rate, we will say, it was Hobart—I think that was it. I have a great deal of data showing how this place—

Mr. CARLIN. Of course there was another Vice President under Mr. McKinley.

Mr. WATSON. Stevenson?

Mr. CARLIN. T. Roosevelt.

Mr. WATSON. Unfortunately, this place was not named after our good friend. The property had been sold in pieces to a lot of people in Pennsylvania—or parts of it had—and at the time the whole thing came into the hands of the New York Tribune operators some of those unfortunates in Pennsylvania were still paying taxes on the property. There was a blanket mortgage on the whole thing, and, of course, they were all legally wiped out. There was a foreclosure under judgment that was an interesting story of a swindle in itself, and the property came into the hands of the people who were dealing for the Tribune at approximately \$10,000.

Mr. NELSON. You say "the people who were dealing with the Tribune or for the Tribune"?

Mr. WATSON. Dealing with and for.

Mr. NELSON. Was this real-estate business conducted in the name of the Tribune itself?

Mr. WATSON. I think so; yes.

Mr. WATSON. And by their authorized agents?

Mr. WATSON. By their authorized agents. I will show you refund checks, issued by the New York Tribune itself, where there was a refund of money at the time the New York Tribune had learned it was under investigation and had retained counsel to defend itself in this action.

Mr. CARLIN. How many lots were in this plat?

Mr. WATSON. They cut it up into lots of 20 by about 100 and made of it something in the neighborhood of thirty to thirty-five thousand lots, and on their map I counted up to twenty-three or twenty-four thousand, and then I stopped the counting.

Mr. CARLIN. The price that they paid for it, then, made it cost about less than \$1 a lot?

Mr. WATSON. I should say very much less than that. Isn't it something like 25 cents a lot, or something like that? I have a map

which I will lay before you, and on which you can count up the number of the lots, if you want exact figures.

I also found that you could buy acreage, as much as you wanted, for anywhere from \$5 an acre up, all around this particular piece of property. I found that the assessed valuation was at its most \$40,000. I found that the year preceding my investigation the Tribune people had protested against the forty thousand assessment and had it cut to \$32,000, or thereabouts. Any figures I give without referring to data are subject to revision.

I looked the property over and could make only, of course, a rough estimate of what might have been expended in the so-called development. Subsequently I got the ideas of the——

Mr. CARLIN (interposing). What was your estimate of what had been spent in development?

Mr. WATSON. I figured, if they spent all told \$125,000 on the purchase of the property and on the development, they had spent an awful lot of money. Obviously, they were to take in in the neighborhood of three-quarters of a million dollars, so that I thought that, as they were leading people in the buying of these lots on the theory that it was purely a circulation scheme and that a good newspaper was going to be back of it and it was going to be developed into something, they were not treating their readers quite as nicely as they ought to.

Those were approximately the main facts that I laid before the United States attorney at my first interview with him.

Mr. NELSON. Just where was this land located?

Mr. WATSON. One part is on Tom's River.

Mr. NELSON. Where is Tom's River?

Mr. WATSON. Tom's River runs, I think, into Barnegat Bay. They have maps which I will show you here, which make it look like it was half a mile from New York and right on Barnegat Bay; but unfortunately the map is partly incorrect.

Mr. NELSON. This is in the State of New York?

Mr. WATSON. No; it is in the State of New Jersey. I also showed Mr. Marshall, or showed his assistant subsequently, and turned over to him a number of communications that had passed through the United States mails, in which they made these representations, and it was on that that I said I had come to Mr. Marshall, because I felt that maybe somebody was using the United States mails improperly and I knew that the Government was always very jealous about that, because I have had experience with their men before in the matter of another newspaper.

I think I had better refer to my data from now on, if you want to hear it.

Mr. CARLIN. You may do so; but I want to ask you this question so as to get the narrative of the thing as you have it in mind. After you went to Mr. Marshall's office, and after these reports were made, to which you refer, what became of the real estate scheme?

Mr. WATSON. The last I heard of the real estate scheme was when some friends, who knew I had been working on it, some time ago told me that recently they had been receiving communications from the New York Tribune urging them to buy lots. The Tribune went along very nicely with its scheme and sold an enormous number of

these lots to people until there appeared to be quite an undercurrent among the people who had bought, and then I understand, although I do not know, that there was not much activity in the sales. I believe they are still getting rid of what there may be left.

Mr. CARLIN. Have they advertised those lots at all in newspapers?

Mr. WATSON. They advertised it to some extent in their own paper. They ran rather cautiously written stories about the development. They got out a special section of the New York Tribune. That section, I think, was not sent out as a part of their paper, but was mailed separately to people who might buy lots, as a piece of literature, perhaps to convey the impression that it had appeared in the Tribune. The scheme was worked largely by literature.

Mr. CARLIN. After you laid all the facts which you had before Mr. Marshall and before the post-office inspectors, then what happened?

Mr. WATSON. The inspectors spent some time on it; they made several trips down to Beachwood with me and were making reports, too, from time to time to Mr. Stephenson, and I called to see Mr. Stephenson from time to time and asked him if we were getting the material he wanted and if there was anything he wanted that we were not getting. There were many discussions about when a grand-jury proceeding would begin, because I realized that in an investigation of this sort you could get your evidence in such shape that you could get a conviction before you had a grand-jury proceeding. My experience is that in investigations you must have a grand-jury proceeding to develop a good many loose things. There were some things that we could not obviously go to the Tribune office and ask them to tell us.

Mr. CARLIN. Did Mr. Marshall ever permit you to go before the grand jury?

Mr. WATSON. There was no grand-jury proceeding.

Mr. CARLIN. There was not any proceeding of that sort?

Mr. WATSON. Not a grand-jury proceeding.

Mr. CARLIN. Can you tell us whether you and the district attorney's office were in accord as to whether there was an offense against the Federal Statutes or not?

Mr. WATSON. My very distinct impression is that Mr. Stephenson expected to go ahead to the grand jury. He kept talking about it and telling me he was delayed by some other case, and could not get into the grand jury right then and there, and we discussed frequently what witnesses would be called before the grand jury, and he asked me to get up a list containing suggestions as to who to subpoena and how to subpoena them. The post-office inspectors came to expect that certainly there would be a grand-jury investigation, because in the course of our work they frequently said, "Yes; we will wait until we get before the grand jury, because if we try to question this man now it may spoil the case. We will get him under oath before the grand jury."

Mr. CARLIN. What explanation, if any, has Mr. Marshall given you why the grand jury was never asked to investigate the case?

Mr. WATSON. The last time I saw Mr. Marshall about the case—this date may be inaccurate—I think was in July of last year. We had heard some time, a month or two before that—I think the secret-service men informed me—that the Tribune was on to the fact that

investigation was under way and that they had retained Henry Wise, former United States attorney, to defend them. This conference in July followed a talk I had with the post-office inspectors, who urged me to let loose publicity in our newspaper at that time, so that it would back up the district attorney's office. I said that although I was a newspaper man I was not making a newspaper fight of it; but I had laid the evidence before the United States Government and had helped them and was perfectly willing to help them as much as they wanted to be helped, but I thought the wisest thing to do was to leave it to the United States Government and not to the New York American.

I saw Mr. Marshall at their suggestion, and there were present Mr. Marshall and Mr. Stephenson and myself. Mr. Marshall on that occasion told me that he had come to the conclusion that the best thing to do with the case was to wait for about six months before proceeding any further, because the case would perhaps be much stronger; that his experience was that sometimes rushing into cases of that kind too rapidly would result in the case falling through. There might be some point that the attorneys for the Government would not prepare properly in a hurry, he said. He furthermore stated that if we started taking any action right now the Tribune might jump in and pave a lot of these streets and shout that we had hustled them too much, that we did not give them a chance to carry out their promises. Whereupon Mr. Stephenson said, "But, Mr. Marshall, they do not guarantee to pave the streets or do anything of that sort, and if they did jump in and spend a lot of money in ways that they do not guarantee to, would not that merely indicate, that they were trying to cover themselves?" Mr. Marshall said, "Well, I think the best thing we can do is to wait to see what develops. I could perhaps go before the grand jury now and possibly come out with an indictment against these people, but on all of the facts as we have them now the indictment might be quashed." I said, "Mr. Marshall, would the facts at all be after you came out of the grand jury room as we understand them now, or would the grand jury proceedings round out some of the points we do not understand now? Why not let us find out if anybody is guilty of anything, and who is guilty?" He wanted to know just how I hooked this alleged fraud up with any particular person in the Tribune office. I told him that those were things which the grand jury would have to learn; that there were things of that sort that I could only explain to him by having a grand jury proceeding or going over to the Tribune office and blowing up its safe, which I did not propose to do. He said, "However, I have decided that the best thing that we can do is to delay the case, and I have so written Henry Wise." To say that I was astonished is expressing it rather mildly. I said, "Mr. Marshall, isn't that rather unusual? Why a letter to Henry Wise?" He smiled and said, "Well, I want to let Henry collect his fee and get away on his vacation.

Mr. STEPHENSON. I thought, looked rather surprised, and without commenting on the matter of the fee, said, "But, Mr. Marshall, if you write them now that there is going to be no prosecution and we attempt to prosecute them in six months from now, won't they bring your letter in and say that we investigated them and whitewashed

them?" Mr. Marshall said. "I doubt if Henry will let them have the letter. The letter will probably rest securely in Henry's office."

Then I took my little bag of tricks and walked out, figuring that I was in wrong. I have waited for six months to pass——

Mr. CARLIN (interposing). Is the Henry A. Wise, whose name you have mentioned, the same Mr. Henry A. Wise who was formerly district attorney?

Mr. WATSON. Oh, yes. I know Mr. Wise very well, having on another occasion had his help as an investigator in another case under Henry L. Stimson, then United States attorney.

Mr. CARLIN. Before the chairman asked the question, you went on to state something about waiting?

Mr. WATSON. I waited for six months to transpire and a few months more have transpired and I have yet to receive any summons from the United States attorney's office in regard to the case. I do not know whether he investigated it to see if the case is any stronger now than it was.

Mr. NELSON. Do you know whether Mr. Wise is still on his vacation or not?

Mr. WATSON. No, sir; I am not informed. I am informed, however, of this point, that I have on several occasions met the gentlemen of the post-office secret service and they have asked me if I was going to lay down on the case.

I forgot to state that Mr. Marshall said to me that if I was persistent about going ahead at that time, I might be able to get the Postmaster General to issue a fraud order, but if I did that it might interfere with a criminal prosecution.

Mr. CARLIN. What answer did you make when you were asked if you were going to lay down on the case?

Mr. WATSON. I told them that I never laid down on any case; that that was not my record in the newspaper business.

Mr. CARLIN. Did those two inspectors make an investigation of that case?

Mr. WATSON. They did.

Mr. CARLIN. Did you talk with them about their investigation?

Mr. WATSON. Frequently.

Mr. CARLIN. Do you know at what conclusion they arrived?

Mr. WATSON. They were extremely cautious in their expression of conclusions they had reached, but I think I know what their conclusions were from some of the remarks they made. For instance, on one occasion, when we were out to Beechwood, after they had looked over the water front, which was the gold-brick part of Beechwood, and said it was very pretty and they could not see anything wrong about that, when we got into the wild interior of Beechwood, and one of them turned to me—I think it was McQuillan—and said, "We have stuck a man in jail for less than this." I asked them outright a number of times if they would tell me exactly what their report was going to be, and they said that was official business and they could not tell me, but I had better be ready to turn loose with a lot of publicity on the case almost any day. They did not say they were very much surprised at the outcome.

Mr. NELSON. That is, meaning Mr. Marshall's six months' decision?

Mr. WATSON. Yes.

Mr. CARLIN. What did they mean by "turning loose with publicity?"

Mr. WATSON. The post-office inspectors had promised me that whenever the Government was ready to let loose on its case they would let me know, because it was obviously a matter that all newspapers would be interested in.

Mr. CARLIN. Do you think so? Have you any idea that all newspapers were going to be interested in this?

Mr. WATSON. I can show you a good many hundreds of pages of newspapers printed in the United States concerning what they had to say at the time James Gordon Bennett was brought back to the United States and forced to make a plea of "guilty" and pay a fine of about \$40,000 for his operations on the New York Herald. That is a case I investigated for the New York American when Henry L. Stimson was United States attorney.

Mr. NELSON. Up to the present time has any newspaper printed anything with reference to this?

Mr. WATSON. No. The investigation has been conducted very secretly. My position has been simply turning over to the Government all the information I secured when helping the Government.

Mr. NELSON. The American has not published anything up to this time?

Mr. WATSON. Not a line.

Mr. CARLIN. Do you know whether the district attorney's office have abandoned this case or not?

Mr. WATSON. The district attorney's office have abandoned it so far as I am concerned, unless they take me before a grand jury.

Mr. CARLIN. Do you mean by that you will not voluntarily go there again?

Mr. WATSON. I mean by that that I would not waste my time going there again.

Mr. NELSON. Have you had any talks with Mr. Marshall since he stated he would let Mr. Wise collect his fee and wait six months' time?

Mr. WATSON. No; I have not followed Mr. Marshall on it at all. I felt that——

Mr. NELSON (interposing). Have you had any talk with Mr. Stephenson since that time?

Mr. WATSON. No. The last time I saw Mr. Stephenson was a few moments after I left Mr. Marshall. Mr. Stephenson and I walked out of Mr. Marshall's office together, and in the corridor I told Mr. Stephenson that I was amazed at the situation, and Mr. Stephenson said, "I have nothing to say."

Mr. CARLIN. Is Mr. Stephenson still in the employ of the district attorney's office?

Mr. WATSON. So far as I know.

Mr. NELSON. How old a man is Mr. Stephenson—how old is he at the bar?

Mr. WATSON. I do not know, sir. I should judge that he is a man in the neighborhood of 40.

Mr. CARLIN. I want to get at your reason, Mr. Watson, for not again taking up the matter with the district attorney's office.

Mr. WATSON. Because, prior to being subpoenaed by this committee, I had begun a plan for other ways of disposing of the matter. There

have been personal reasons why I have not been very active myself in the past year.

Mr. CARLIN. But have you reached the conclusion that the district attorney's office does not propose to act?

Mr. WATSON. The conclusion is forced on me.

Mr. CARLIN. Then your idea is that in order for the public to get the benefit of what you seem to think is the fraud that has been practised upon them, some other remedy must be sought?

Mr. WATSON. That is my conclusion, if I am to do anything with it.

Mr. CARLIN. You spoke of having some data, Mr. Watson?

Mr. WATSON. Yes, sir.

Mr. CARLIN. Will you give us the benefit of the data you have?

Mr. WATSON. Yes, sir. I will say that some of my data at the present time were in the possession of the United States district attorney's office or the post-office inspector's office, and if you think you may want any further testimony from me, I would thank you to get it back for me.

Among other things I showed to Mr. Marshall were photographs that we had made of Beechwood, and I show you a photograph of the Beechwood boulevard.

Mr. CARLIN. Can this be filed with the committee?

Mr. WATSON. I should be glad to file with the committee, if the committee wants them, copies of these photographs.

Mr. CARLIN. Then we have these marked as exhibits so we will be able to identify them.

(The photograph in question was marked "Watson Exhibit No. 1.")

Mr. WATSON. This photograph shows "the beautiful" sand road. That term "the beautiful" is sarcasm, of course. This Beechwood Boulevard is what they call the main street of Beechwood.

Mr. NELSON. May I interrupt to ask you a question: Do you know whether they actually took people on the ground and showed them these lots?

Mr. WATSON. Some of them. They showed people gold bricks when they wanted to sell them; but the part they sell they do not show you.

Mr. NELSON. They took them down to the beach?

Mr. WATSON. They took them down to the beach, and they sell you something back in the woods that is almost like Africa. The last time I had it up with the United States attorney, there were only three or four conveyances of tiny pieces of property near the water front. One of those was a conveyance to Col. Sackett, of the counsel for the New York Tribune.

I next show you a photograph marked "The Bathing Beach at the Point."

(The photograph in question is marked "Watson Exhibit No. 2.")

Mr. WATSON. I have not sent the money to have an engineer survey, but I have been informed there is a quicksand there. I know I walked on parts of it where the sand ran rather fast. I do not know whether it is dangerous or not.

I next show you a photograph labeled "Jake's Branch Brook, Cedar Swamp, Toms River, Beechwood," which is a picture of some dead trees in water up to their ankles.

(The photograph in question was marked "Watson Exhibit No. 3.")

MR. WATSON. They did not cut that particular piece into lots and sell it, because they could not walk anybody in there, but they sold thousands of lots all around this terrible swamp, with more millions of mosquitoes than they are spending dollars in Europe to-day.

Next there is a photograph labeled "Club House site, Beechwood, Toms River, N. J."

(The photograph in question was marked "Watson Exhibit No. 4.")

MR. WATSON. That shows the place where they started to build a little so-called clubhouse. There are a lot of trees and a lot of lumber. The clubhouse since has been built.

Next I show you a photograph of the Atlantic City Boulevard which cuts through the short length of this property. That was not built by the Tribune, but was built by the State of New Jersey, and I would like to see somebody that bought lots from the Tribune facing that boulevard, on either side of it.

(The boulevard in question was marked "Watson Exhibit No. 5.")

MR. NELSON. You know of none such?

MR. WATSON. I found none on the record.

I next show you a photograph called "Station site, Beechwood, Toms River," which showed the Beechwood railroad station being built.

(The photograph in question was marked "Watson Exhibit No. 6.")

MR. NELSON. You mentioned that you found no sales on record. Approximately how many sales had taken place when you last examined the records?

MR. WATSON. You mean conveyances?

MR. NELSON. Yes.

MR. WATSON. They did not convey until your contract had been paid up or unless you paid cash. You had a right to pay cash or in installments. We found several hundred conveyances on record.

This railroad station is built at the intersection of the Pennsylvania and Jersey Central Railroads. I think under the laws of New Jersey at grade crossing trains have to stop. That is why so many trains stop in Beechwood; not because there is anybody to let off or take on.

I now show you a photograph labeled "Compass Avenue, Beechwood, Toms River."

(The photograph referred to was marked "Watson Exhibit No. 7.")

MR. WATSON. This is typical of the so-called streets of Beechwood, consisting of nothing but a blazed trail through a forest, as the photograph shows, with the trees blasted out, and in most instances the blasted trees not even removed. The holes that the trees are blown out of are not filled.

I now show you three photographs, one made under the direction of the United States post-office inspectors by a photographer. One

of them is labeled "Post-office inspectors and representatives of the New York American inspecting the property corner of Harpoon and Lookout Avenues."

(The photograph referred to was marked "Watson Exhibit No. 8.")

Mr. CARLIN. Does that mean "look out for the harpoon"?

Mr. WATSON. "Look out for the harpoon" is correct. That is typical again of the streets, and is the same kind of streets that I have just described. The three figures in this photograph are the two post-office inspectors and myself, showing that the Government was working with me.

Next, we have a photograph labeled "Grounds near bath houses," showing the 98-cent park benches and lawn swings. The "98-cent" is gratuitously put in there.

(The photograph referred to was marked "Watson Exhibit No. 9.")

Mr. WATSON. The post-office inspectors were interested in having that photograph, because they said at the time that putting in such terribly cheap lawn trimmings as that meant more to them, from the post-office point of view, than anything else that had been presented to them. It indicated more to them the effort made to get the public to think it was getting something.

I next show you a photograph labeled "Barnegat Avenue, near Beechwood Boulevard, Swampy Hollow," typical of what is called a street.

(The photograph referred to was marked "Watson Exhibit No. 10.")

Mr. WATSON. When Inspector McQuillan saw that street he said, "My God!" Not alone is there anything that resembles a street, but merely a blazed trail, blasted out, with the tree stumps laying around.

Mr. CARLIN. Can you tell me where they got that name "Barnegat"?

Mr. WATSON. No, sir; I can not.

You will observe there is no effort at curbing at all. I now show you a photograph, not gotten up by direction of the postal inspectors, called "Double Trouble Road." Double Trouble Road is an old country road consisting of white sand, such as you find at Coney Island. It is a narrow, little winding road, as you see in the picture, just about wide enough for a vehicle to get through. The name is historic. They tell me that a fellow built a dam down there—an old man, about 100 years ago, and he just got it built and beavers came and cut their way through it, and he had to build it over again, and so he said, "There is double trouble," and that is how it got its name.

Mr. NELSON. Is that on the road to Beachwood?

Mr. WATSON. Yes, sir; that cuts through Beechwood.

Mr. NELSON. Have you there letters that passed through the mails?

Mr. WATSON. Most of those that are of importance—I may have some here, but I would have to sit down for an hour and pick them out. I will be glad to do that at your leisure.

Mr. NELSON. There was no question of Marshall's jurisdiction in the matter?

Mr. WATSON. Oh, no; that question never came up. Had there been any such question, obviously the postal inspectors would not have spent weeks and weeks of time and Government money on it. They would have immediately told me to take it to some other authority, if they knew their business.

This whole section is thoroughly notorious for its real estate scandals; so much so that in an official publication gotten out by the State of New Jersey, and reading, "New Jersey State Board of Agriculture; farm lands in New Jersey, their natural characteristics and adaptability to the various farm crops; Trenton, N. J., 1913," the State of New Jersey went to the extent of saying:

It may not be amiss to warn intending purchasers against land gamblers, who occasionally advertise "city lots for sale" in "the pines" at prices out of all proportion to the value of the land. For their own protection, prospective buyers had better consult established and reliable authorities for information, and visit the land before purchasing.

That is a very decent warning on the part of the State of New Jersey, because there are so many of these developments where you see the stakes in the ground to describe what were to have been streets, and you see trees growing up in the "streets" of deserted cities, where people have lost their money.

Mr. NELSON. Did they have reference to this neighborhood?

Mr. WATSON. Yes; this general locality.

Mr. NELSON. Where Beechwood is located?

Mr. WATSON. Yes, sir; the pine section of New Jersey.

The New York Tribune issued a booklet, entitled "The Greatest Subscription Premium Ever Offered, and the Reason Why." This is headed "New York Tribune, Promotion Department, Tribune Building, 154 Nassau Street, New York City." Inside it reads—I will just read enough to make the point:

A little plain talk.—A newspaper uses premiums to make friends and subscribers. It usually offers you articles at a price way below their usual selling price, to induce you to subscribe for the paper, and hopes that you will continue to subscribe, and that is the only object of premiums—to get you to subscribe for the paper.

Horace Greeley would not like the English of that.

The price of the premium offered must be way below the usual selling price, and the middleman's profit and all other profits must be eliminated, and the article offered to you at practically cost. The article must, of necessity, be offered to you at a low price, else you will not subscribe for the sake of getting it, and the endeavor is to offer you the biggest possible value for the smallest possible price. When the Tribune decided to use a subscription premium, many articles were considered. The Tribune wanted something bigger and better than was ever before offered by a newspaper as a premium. Land was suggested, and figures showed that by acquiring a whole beach resort, by contracting for miles of road work, for months of surveying, that lots could be offered in a simply beautiful resort at a figure that would be ridiculous from a real estate standpoint. But to offer such a premium meant an initial outlay far in excess of what any newspaper ever before had spent for premium purposes, but the Tribune wants you for a subscriber, and Beachwood is the result.

On that point, I told Mr. Marshall that I considered this "practically at cost" business of considerable importance, in view of the facts, and I said as to the Tribune's investment in this, there was very little work, if any, done at the time they started selling. Possibly the grand jury investigation would show that only the sucker

money went into the development that was done. In this booklet they have various letters of indorsement. I looked far enough into it to come to the conclusion that they were fake indorsements—not the conclusion, but the definite knowledge that they were fake indorsements. I did not go into all of them, because I thought the United States Government would do some of the work before its grand jury. For instance, there was an indorsement as follows. The top of the stationery read:

E. P. ROBINSON, M. D.,
116 West Thirty-ninth Street.

NEW YORK CITY, January 22, 1915.

THE NEW YORK TRIBUNE.

Promotion Department.

DEAR SIR: Now that I have seen Beechwood I am very glad indeed that I own lots there.

Perhaps you do not know that I secured these lots before I had seen the property itself and before I knew anything about either the neighborhood or climatic conditions prevailing in the vicinity, but I felt that the representations of the New York Tribune would be sufficient guarantee for me to act before seeing the property.

However, I must say that, since visiting Beechwood, in my opinion, the Tribune has not represented the place in the terms of praise that it deserves, nor does it lay sufficient stress on the advantages offered a lot owner at Beechwood.

When I visited Beechwood I found many of the buildings under construction. The dining room and bath houses were well under way, while the depot, at the intersection of the Central Railroad of New Jersey tracks with those of the Pennsylvania Railroad, was nearly completed. The privileges of such buildings are given freely with the securing of a lot, and this is something not often met with in a lifetime.

The land about Beechwood is quite level, high, and dry—just the condition to prevent swamps and mosquitoes—while the air is pure and invigorating. Lakewood owes a large measure of its success to the pureness and invigorating qualities of its air, and Beechwood enjoys these same advantages on account of its close proximity to Lakewood.

My enthusiasm about Beechwood is so great that I am planning to make it my permanent summer home. As soon as the weather conditions will permit I am planning to erect a substantial summer residence to be ready for my next summer vacation.

Both my wife and my son own lots in Beechwood, and their enthusiasm equals mine.

My sincere wishes for success to you and your project.

Yours, very truly,

E. P. ROBINSON, M. D.

I visited Dr. Robinson myself, in company with one of my investigators, and interviewed him, and I swear that indorsement is not on the level. The doctor said—I have a report which I made within an hour after the interview, and I will stand on that report rather than on what I say now, but I will try to recall what he said. It was to the effect that he did not know where these lots were, and he had changed his mind, and he did not think he would ever build there, and he gave this indorsement to the Tribune, but he had not expected that people would come running in there and asking him about it, and that he had since requested the Tribune to take it out of the booklet, and that he might some time use his lots for a public garage down there; and he told me where they were, and I asked him if he realized that that was about a mile off the main road and that you could not drive an automobile in there unless it was equipped with an aeroplane on top of it to lift it over the roads. In other words, it was too ridiculous for consideration.

Another one of their indorsements was written by a man who signs himself "J. S. Walter," and he writes on the stationery of the Childs Restaurant Co. and gives his address as 42 East Fourteenth Street. He writes under date of January 25, 1915, and says:

CHILDS EXECUTIVE OFFICES, 200 FIFTH AVENUE,
New York, January 25, 1915.

NEW YORK TRIBUNE, *New York*.

GENTLEMEN: Recently I secured four lots at Beechwood with the intention of building a summer home, but last week I was offered \$100 apiece for two of them, so concluded to sell the two and secure four others in another location, although I appreciate they will not be so well located. It was hard to turn down such a good offer in such a short while after my purchase. The fact that the property is so appealing is proof that its merits are at once apparent not only for a home site but as an investment. I am pleased to add that a number of my friends have already subscribed to your property and the Tribune.

Yours, respectfully,

J. S. WALTER,
42 East Fourteenth Street.

I invite you to call the postal inspectors before you and ask them what they learned about this particular indorsement.

Mr. CARLIN. Can you tell us?

Mr. WATSON. These gentlemen always took the position of not taking me into their confidence, but they did go to the extent of telling me that this indorsement was not on the level. The details of it I have forgotten. I would rather have them speak for themselves. The man signed it, and in that sense it was on the level; but there was nothing to it, and they felt that the writer could be used as a witness before the grand jury.

Mr. NELSON. Did you investigate as to the facts stated in that letter, that he had actually sold those lots for \$100 each?

Mr. WATSON. I personally did not investigate them at all. The postal inspectors did, and I understand from them that that part of the letter is not true, although I will make no statement to you about it myself.

I told you some time ago about a special section of the Tribune, which was sent out. I now show you what purports to be a four-page special section of the New York Tribune, bearing on its first page headlines, with the word "Extra" in huge type across the first page.

Mr. CARLIN. What is the date of it?

Mr. WATSON. It is dated November, 1914, but, for the first time, I observe that there is no day.

"Subscribe for the New York Tribune and secure a lot at beautiful Beechwood," which is part of the literature they sent out. I can supply you with a copy of this, if you wish it. It explains there, as follows:

Subscribe for the New York Tribune, daily and Sunday, for six months, from any newsdealer in your neighborhood, for which you pay the regular subscription price. In consideration of this six months' subscription the Tribune will give you a lot at Beechwood for \$19.60, and this \$19.60 covers the cost of making the deed, all notary fees, and all incidental expenses, including copy of the Fidelity Trust Co.'s guarantee of title in the trustee. Payments can be made in installments of \$2.80 a month. When you have made your first payment of \$2.80 you will be given the right to use the property, and you can build on it any time. When you have paid for the Tribune for the six months covered by your agreement, and have made all your lot payments, you will be given the deed to the lot. It is a simple and definite proposition. A trustee's warranty deed will be given. All of these Beechwood lots have been conveyed to a

trustee, Mr. Stanley D. Brown, of the law firm of Sackett, Chapman & Stevens. Mr. Brown as trustee will convey by trustee's warranty deed to all subscribers taking Beechwood lots. A copy of the Fidelity Trust Co.'s guarantee of title in the trustee will be given with each deed, absolutely free.

Then there appears a copy of their contract form and various other things.

Mr. CARLIN. Was this extra sent through the mails?

Mr. WATSON. Yes, sir.

Mr. CARLIN. Was it ever, as a matter of fact, published as any part of the Tribune?

Mr. WATSON. I do not know that it was. I doubt it. There is no doubt of its having been sent through the mails, because, independently of my investigation, the post-office inspectors got copies of it that had been sent through the mails, and the proof of passing through the mails was sufficient for their purposes; and I say that, having full knowledge of the great difficulty of procuring proof of mailing. And in here they tell you a few of the details that you will possibly be very much interested in their yacht club.

You must act quickly. Subscribe at once. You will never have another chance like this, Beechwood. If you could ask nature to make to order a location for your summer home, you probably would ask for some of these features: Natural beauty, accessibility, safe boating, good fishing, cool breezes, and in a coast resort region. You can have a place with all these features. You will not need to have it made to order. Nature already has produced it. It is Beechwood, at Toms River, Barnegat Bay, N. J. Beechwood is just what its name implies—beach and woods. The entire tract is a grove of pine and oak, with over a mile of water front. The trees grow right to the edge of the sandy beach, and you can pitch your tent or build your cottage amongst the health-giving pines, and also have all the pleasures of seashore life. On the shore, the Tribune is building a clubhouse for the free use of lot owners and their guests. It is also erecting a bathing pavilion, dining room, hotel, and yacht club building. Along the edge of the beach, amongst the trees runs Bay-side Walk, where from the rustic seats you can watch the many motor and sail boats on the bay.

Mr. CARLIN. The committee will now take a recess until 2 o'clock.

(Whereupon at 1.25 o'clock p. m., the subcommittee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The hearing was resumed at 3.15 o'clock p. m.

STATEMENT OF VICTOR A. WATSON—Continued.

Mr. WATSON. I will offer you a New York Tribune map of Beechwood, such as was sent out with other literature, so you will know what the property consists of. It is a map showing the location of the two roads of which I showed photographs.

This [indicating] is the Atlantic City Boulevard, being a road that runs parallel with Toms River, about a thousand to twelve hundred feet from the river; also showing Double Trouble Road over in the southerly end of the property, also showing the intersection of the Jersey Central and the Pennsylvania Railroads; also showing the manner in which the acreage has been cut up into many thousands of lots.

The map shows a frontage on the water of about 2,000 feet. It shows that the property runs away from the river several miles. It

is the property between the Atlantic City Boulevard and the river—that side—they were not conveying to lot owners, but their agents told the intending purchasers that all of these lots had been sold, although there are only two or three conveyances of individual lots on record at the time of the postal inspectors' examination. Therefore, out of approximately 30,000 lots in this property, there are just a few hundred within reasonable distance of the water.

As the map is laid out, it shows approximately 80 miles of so-called streets. There is not a light, either gas or electric, in any part of the premises, except possibly on the State road which passes through the short way of the property.

Mr. CARLIN. How about the moonlight?

Mr. WATSON. I do not think the Tribune controls the moon.

Mr. NELSON. Any moonshine?

Mr. WATSON. There are no water pipes; no sewer system; no such thing as a sidewalk, either geographical or material. The so-called streets are cleared trails 30 feet wide.

Mr. CARLIN. Have they removed the stumps from the roadways, or have they left stumps in there?

Mr. WATSON. The last time we were there they had left a lot of trees they had blown up in the middle of the 30-foot roads, and in some places they had pulled them over into the bushes and trees on the side of the road.

Mr. NELSON. Are there any sidewalks on this property?

Mr. WATSON. They did not pretend to put them down.

Mr. NELSON. And no sewers?

Mr. WATSON. No, sir.

Mr. NELSON. And no lights at all?

Mr. WATSON. No, sir.

Mr. NELSON. Just these trails we have seen pictures of as streets?

Mr. WATSON. That is all. The only improvements are on the water front, where they have built this so-called club, the casino building, etc.

Mr. NELSON. You say you are a member of the yacht club, are you Mr. Watson?

Mr. WATSON. Yes, sir; I have my badge here.

Mr. NELSON. What are your privileges?

Mr. WATSON. I do not know; I have never been able to find out. I can keep a yacht there if I want to, I suppose.

When I say that I am a member of the yacht club, that is not an exact statement. One of my investigators is. This is the card evidencing his membership in the yacht club [exhibiting] and I offer in evidence the beautifully engraved card, printed in the upper right-hand corner with the blue flag, such as the New York Yacht Club might present as its membership card for members.

I now show you the pin, indicating membership in the yacht club, being a brass pin with a blue enamel face on which is the inscription, "Beachwood Yacht Club."

Mr. CARLIN. About what would be the cost of that pin?

Mr. WATSON. I should say possibly about a cent or a cent and a half, depending upon the quantity ordered. That, too, the secret-service men regarded as very important. They put that in the same class as the benches.

Mr. NELSON. Is there a club building on the grounds?

Mr. WATSON. There is a club building and there is a casino building.

Mr. NELSON. What is the nature of that structure?

Mr. WATSON. They are all wooden structures—no plaster—gotten up on the rustic type, the most inexpensive structures possible. They have a place they call a hotel. It is a one-story structure of the same general type and plan—pine doors inside, and tiny little beds in the rooms. They had an assortment of the cheapest possible type of white enamel beds with the cheapest possible mattresses and a few blankets, etc. The postal inspectors examined all these things with me and found they had all been shipped from a concern in New York to one B. C. Mayo, who appears all the way through as the partner or active man for the Tribune in this entire scheme.

Mr. NELSON. Did you investigate whether it was his scheme with the Tribune taking it over or the Tribune's scheme and he acting as its agent?

Mr. WATSON. I became convinced that either he had worked it before, and the Tribune heard of it and sent for him, or he had gone to the Tribune and proposed to them and they accepted it.

Mr. NELSON. When you said "worked it before," do you mean with this special tract?

Mr. WATSON. No, sir; somewhere else.

Mr. CARLIN. Who is this Mayo? What do you know about him?

Mr. WATSON. I do not know anything about him, except he appeared to be a real estate promotor. He signs some of the literature. The copyright of this booklet I have shown is in his name. He has a son who is in charge of the office in the Tribune office where this special branch of the work is conducted, and in the various transfers, all up to the time that the property got into the hands of the Tribune's lawyer as trustee, Mayo's name figures as one of those through whose hands it passed.

Mr. CARLIN. Who executes the deeds?

Mr. WATSON. The trustee.

Mr. CARLIN. The trustee for the Tribune?

Mr. WATSON. The trustee of the property who is counsel for the Tribune.

Mr. NELSON. The trustee of this property?

Mr. WATSON. Yes, sir; the trustee of this property is in the law firm which represents the New York Tribune in all matters, and in the Tribune literature it is made perfectly clear he is the Tribune's representative in this matter.

Mr. NELSON. From whom did they purchase this property; can you give the name?

Mr. WATSON. Yes, sir; I can give you the full history of that. I will find that in a moment. If I may, I will read into the record, on the question of the value, this letter before I put it away. This is a letter from the county clerk's office of Ocean County, N. J., and reads as follows:

MAY 25, 1915.

Mr. E. D. ACKERMAN,

2231 Valentine Avenue, New York City.

DEAR SIR: I am inclosing list of 102 names of owners of Beachwood lots; same are just as they were taken off the records and they could not be taken off in reference to the dates that they were recorded, as we are running three books at this time. I was informed by the president of the county tax board that

the 2,000-acre tract of the Beechwood property was assessed for \$42,000 last year, but was reduced to \$37,500 on appeal; and the year before the same was assessed at about \$32,000, and the 50 and 80-acre tracts are assessed at about the same ratio per acre.

This property consists of a 2,000-acre tract, a 50-acre tract, and an 83-acre tract.

In reference to the further lists of lot owners, same will cost you 5 cents per name straight through, as I have found considerable trouble in making up the list.

Kindly advise me if this will be satisfactory to you and whether you wish the lot owners sent you regularly. An additional fee of \$2 on the inclosed lists will be satisfactory this time.

Very truly, yours,

RUSSELL ROBINSON.

That shows the assessed value, and I think the postal inspectors will testify they made some inquiry of the postmaster in Toms River, who was a member of the board of assessors, and got his opinion as to the value and similar things.

Now, prior to the place becoming known as Beachwood, for a short time prior to that it was known as the Pine Bay property, but at all times prior to this and back to 1900 it was known among the local people of Toms River as the 2,000-acre tract. The 2,000-acre tract was acquired from the estate of Mary S. Stanton, it having been transferred to Frederick Taylor by Walter Mason December 31, 1900. Mason was a trustee for the estate of Mary Stanton. He got \$1 and other valuable considerations, subject to a purchase money mortgage of \$8,000. The deed and mortgage are recorded in Ocean County. No purchase price is given in this conveyance, but we examined the deed and looked up the United States revenue stamps. I have forgotten a point there, but I think there was a special tax of some sort during the Spanish War, and from that I was able to make some computation.

Mr. CARLIN. The tax was placed on the value of the land?

Mr. WATSON. Yes, sir; we found stamps amounting to \$24 on the deed. In the accounting of Walter Mason as trustee of the estate of Mary S. Stanton, filed in March, 1901, in the surrogate's office of New York, Mason refers to an item in his expenditures as "revenue stamps in the transfer of the Toms River property to Frederick H. Taylor, \$19."

On January 6, 1901, the records show that Frederick H. Taylor and wife, of Philadelphia, conveyed the property to the Pittsburgh & New Jersey Land & Improvement Co. for the recorded consideration of \$24, subject to a mortgage of \$8,000. In all subsequent transfers and all other transfers of the property no mention is made of this mortgage of \$8,000.

On August 12, 1902, Frederick H. Taylor conveyed the property to the Pine Bay Co. for a nominal consideration. There was something odd about the Pine Bay Co., which was organized by a man named Carpenter, who was its president, and my recollection is this original Pittsburgh Co. had sold a lot of this property to different people and had issued deeds, these deeds being subject to this blanket mortgage which I have referred to in here, but the deed said nothing about the blanket mortgage, and the people who bought the property did not realize that their property was subject to the

blanket mortgage, which subsequently wiped them out, when the Tribune took possession.

Mr. NELSON. Have you any knowledge as to whether the Tribune put any money into this proposition itself?

Mr. WATSON. Later on—

Mr. NELSON. Whether the Tribune actually paid for the tract itself and put money into it?

Mr. WATSON. I do not know, and have no means of knowing, except there is a conveyance which takes it into the possession of the Tribune without mentioning whether it was a gift or whether the Tribune paid anything.

Mr. NELSON. Filed by the Tribune or Mr. Mayo?

Mr. WATSON. By the Tribune's lawyer as trustee for the Tribune.

Mr. NELSON. Does the contract recite whether he was trustee for the Tribune?

Mr. WATSON. I think it does. I think I have the deed here.

Mr. CARLIN. Who was the grantor in that deed?

Mr. WATSON. I think Mayo, but the deed will speak for itself.

Mr. CARLIN. And all subsequent conveyances to individual lot holders have been made by this trustee, of course, in conveying title to the property?

Mr. WATSON. Yes, sir—

Mr. CARLIN. Does the deed to the trustee disclose who the beneficiaries are—whom he is acting as trustee for?

Mr. WATSON. I have an actual deed.

Mr. CARLIN. I mean the deed from Mayo to the trustee; does that deed disclose whom the trustee is acting for—who the cestui qui trust is?

Mr. WATSON. I can not answer that.

Mr. NELSON. You can look that up and answer that. I would like to get back to Mr. Marshall's relationship to this transaction. Mr. Marshall had access to the same information you are giving this committee?

Mr. WATSON. Yes, sir; these are all copies of papers which I turned over to his office—to the postal inspector and Mr. Carpenter. This is a carbon copy of the unofficial report I handed to Mr. Marshall's office.

Shall I bring these transfers up to date on this thing?

Mr. CARLIN. Yes.

Mr. WATSON. I will try to make it as brief as possible.

Carpenter was president of the New Pine Bay Co., and remained president for some time. He was going to spend a lot of money to try to do something with this tract of land. As far as we can learn, nothing was done. Shortly before the New York Tribune announced its scheme of selling this land at \$20, some months before that, a lot of activity started in connection with the property. Mr. Carpenter, who is now dead, made a claim against the Pine Bay Co., owning this tract of land, for some thousands of dollars for services and for taxes he had paid, etc., but, being president of the company, he turned his claim over on an assignment to one Hall. Hall sued the Pine Bay Co. Hall, I understand, is related to Carpenter. He sued the Pine Bay Co. and somebody went from Carpenter's office over to the Essex Club in Newark and permitted service. As president of

the company, Carpenter made no defense and they got judgment. While this thing was in progress and the Fidelity Co. of Newark was handling all this real estate investigation Carpenter died. I asked the United States attorney to subpoena Carpenter's son on the validity of this claim of his father against the company, because we have statements from young Carpenter which make it look very much as if the judgment granted by the courts of New Jersey was not a good valid judgment based on facts. There may have been some padding of this charge against the company, running it up to sixty or seventy thousand dollars, and we tried to get a statement out of Reese Carpenter's widow—widow of the dead man. There was quite a mix-up over this matter; as I understand, there was a death-bed scene, where Mayo, or somebody representing Mayo, tried to get the dying Carpenter's signature in connection with a deed or some other paper. The judgment was granted to this man Hall in the sum of—

Mr. CARLIN. Was the property sold under an order to foreclose that judgment?

Mr. WATSON. Yes, sir; the property was sold.

Mr. CARLIN. Was that when Mayo bought it?

Mr. WATSON. No, sir; he did not buy at that time. The place was sold by the sheriff on February 10, 1914, one month after the death of Carpenter. At about this time the Fidelity Trust Co. of Newark entered the negotiations and took up the question of securing title to the tract, but the title policy could not be issued because the original lot owners of Hobart City had not been served, and they reopened the suit and served the lot owners of Hobart City by publication and made them parties to the transaction. Then, all of a sudden, the \$8,000 mortgage that I mentioned a few moments ago came up, and the people who held the \$8,000 mortgage began foreclosure proceedings. They had all forgotten about this little \$8,000 mortgage.

Mr. NELSON. Who held that?

Mr. WATSON. It was held by an attorney in New York City as trustee of an estate. I am at a decided disadvantage in all this, because the Post Office Department has all the records that would refresh my memory rapidly, and I find it difficult to give a connected statement concerning this matter.

Mr. CARLIN. That is not very material, Mr. Watson.

Mr. WATSON. At any rate, they had another foreclosure sale of the property, and, so near as we can learn, they then paid the \$8,000 mortgage plus the interest, and I think if the widow of Reese Carpenter were brought here she would testify that thereupon the Fidelity Co. of Newark and Mayo and the Tribune people, and all the rest of them, did not pay her any part of the judgment she got. She was wiped out. All the money that was ever paid for the property by the Tribune-Mayo crowd was \$8,000, with some interest, bringing it up to less than \$10,000.

Then the conveyance went through the hands of various people: for instance, one Addison Nickerson, who was a surveyor and whose name appears as surveyor in all the—

Mr. NELSON. How did you reach that conclusion, that they paid only the \$8,000 plus some interest, etc., for this tract—about that amount? -

Mr. WATSON. For the very simple reason that I have it all here in the foreclosure—that is, the foreclosure under the mortgage. The place was again sold at auction by the sheriff on September 26, 1914, and again bid in by one Ernest F. Griffith, who is a clerk in the employ of the First Mortgage & Guarantee Co. of Long Island City, for \$9,266.26, which, together with the amount of \$4,750 bid at the previous judgment sale, would seem to make something over \$13,000; but the amount received at the first sale was, by their manipulation, credited to the second sale; I think the money was held in chancery. The amount received in the second sale covered the principal and interest, together with the cost of the last foreclosure sale, on which there was a deficiency of \$71.

On September 26, 1914, Griffith conveyed the 2,000-acre tract to Addison D. Nickerson. Griffith, I believe, was an employee of the Fidelity Co., of Newark. Nickerson, as I have said, is a surveyor, and whose name appears in the Tribune literature. This was but two days after the sale. Nickerson is Mayo's engineer and was then, at the time the postal inspector visited this place, in charge of the work. We found him in charge. On November 10, 1914, Addison Nickerson and wife conveyed to Bertram C. Mayo, for a nominal consideration. On the same date Bertram Mayo and wife conveyed to Stanley D. Brown, as trustee, and on September 12, 1914, there is a corrected deed from Bertram C. Mayo to Stanley D. Brown, making some corrections in the survey.

Mr. NELSON. That is sufficient for that.

Mr. WATSON. That brings the main 2,000-acre plat into the hands of Stanley D. Brown.

Mr. NELSON. Have you investigated the validity of the title now, as far as the trustee can convey the lots?

Mr. WATSON. I presume they very carefully chloroformed any claims the original Pennsylvania owners might have had. If you look at it in the cold legal sense, the people who have bought the property—the people in Pennsylvania—the law says they must know there is a blanket mortgage, and must protect themselves against it, and, of course, they were not in a position to do so, and, of course, any claims they have have been extinguished, but you must have a lawyer to tell you that. I presume the title is good. You buy one of these lots at \$19.60, and go to the Fidelity Co. and ask them to give a guaranty of title and survey, and they will give it to you for the sum of \$50; in other words, they will charge \$50 to guarantee a \$20 lot.

Mr. NELSON. I understood, from reading some of the literature, that this was free with the lot.

Mr. WATSON. That is just a guaranty. It is not a title insurance and guaranteed survey.

Mr. NELSON. What is the nature of that guaranty?

Mr. WATSON. That is the usual real estate guaranty, like a haberdasher will say, "We will guarantee this is a shirt." It does not mean really anything, except they own it. They guarantee that this fellow owns it, but they do not guarantee his title is clear. That is my understanding of the language of a guaranty of that sort. They will give you a copy of the title company's policy to the Tribune-Mayo crowd from Stanley D. Brown.

You will say, "I want to know if my lots are there, and where are they," and that will cost you \$50. We know that, because we bought some of those policies from the Fidelity Co. for \$50 apiece. They are now in the possession of the United States Post Office Department.

Mr. CARLIN. Were the officers of the Fidelity Co. interested in any way in the Tribune Co.?

Mr. WATSON. That is one of the matters which I hoped might develop before a grand jury. I figured it would do me no good to go ask them if they had any interest in the Tribune, or had been lending any money to the Tribune, or what their interest was. I thought that was something Mr. Marshall could learn more about than I could.

Mr. CARLIN. What is your theory?

Mr. WATSON. I kept that open in my mind all the way through. I tried not to come to any conclusion which was not based on facts. I was waiting for a grand-jury investigation before coming to any conclusion about anything.

Mr. CARLIN. You do not know whether that has been had?

Mr. WATSON. No, sir.

Mr. CARLIN. What is your idea as to why it has never been had?

Mr. WATSON. That is pretty hard to answer.

Mr. CARLIN. You must have some idea about it.

Mr. WATSON. I have an idea, yes; but I do not think it would be fair to Mr. Marshall, or to the Tribune, or to you gentlemen to state an idea I had that I could not back up.

Mr. CARLIN. You say Mr. Marshall told you he was going to take the matter under advisement for six months?

Mr. WATSON. Yes, sir; he would wait for six months, so that the case would be strengthened.

Mr. CARLIN. You said something about his writing a letter to Mr. Wise at the same time.

Mr. WATSON. Yes, sir.

Mr. CARLIN. What was that?

Mr. WATSON. He said—along about the conclusion of the conference he said, "I have also written Henry Wise that there will be no prosecution." At the same time he told me he was going to wait for six months, and then take the matter up with the grand jury. I could not quite understand why he should write Mr. Wise there would be no prosecution and tell me there would probably be one in six months, or at least there would be a grand-jury investigation.

Mr. NELSON. What further did he say in reference to Mr. Wise? As I recall your testimony, you say he said something about a fee and a vacation. What was that again?

Mr. WATSON. I asked him why he had written Wise telling him there would be no prosecution, and he said, "I want to give Henry a chance to collect his fee and go on his vacation." Then, Mr. Stephenson, the assistant district attorney said, "But, Mr. Marshall, with that letter in their possession, if we attempt to do anything in six months from now, would they not produce the letter and say 'the Government investigated us and found nothing and whitewashed us?'" And Mr. Marshall said he did not think the Tribune would ever get the letter; that it would probably remain in Henry's office.

Mr. NELSON. Now, as far as you are concerned, why did you conclude you would not go back and press the matter with Mr. Marshall?

Mr. WATSON. I concluded that a public prosecutor to whom I, in good faith, had taken a mass of evidence which looked as if somebody was doing something improper, and instead of consulting with me as other gentlemen in his position have consulted with me in other transactions at different times, turned me over to his assistant and at the next consultation I had with him, informed me he had written the attorney for the defense there would be no prosecution—I concluded he was the wrong man to waste my time on.

Mr. CARLIN. In what sense?

Mr. WATSON. I thought he did not show very much interest in the proceedings. I thought if he had been very much interested in it, he would—if he found any weakness—he would have told me what the weakness was, and asked me if there was any evidence to offset that weakness; if there was anything that had not been developed he would have advised me what he wanted developed.

Mr. NELSON. Did he state to you at any time personally—or did his assistant ever state that they had investigated and found you had no case?

Mr. WATSON. Oh, no, sir. If they had made that statement to me, I would have engaged some first-class lawyer to advise me whether I was wasting my time or not. I think I know something about the legal end of these matters.

Mr. NELSON. Was there anything stated to you that would in any way indicate that Mr. Marshall had any fear of the Tribune or was loath to engage in prosecution where it was a party, or anything of that kind?

Mr. WATSON. No, sir; he did not. He never said anything of that sort, but from the suggestions of the postal inspectors that I let loose with publicity I gathered that maybe they meant that would make the United States attorney's office more interested, and I did not propose to hold the bag for the United States attorney's office. If they had a case, I felt that they should have prosecuted it. I felt that enough had been presented to them to interest the assistant in Mr. Marshall's office and a couple of inspectors, who were very conservative at the start and more enthusiastic at the finish.

Mr. NELSON. How many were there?

Mr. WATSON. Two postal inspectors, and I think there were some others sent on odds and ends, and Mr. Stephenson handled the case down town.

Mr. NELSON. The grand jury was in session all the time, was it not?

Mr. WATSON. If they were not they could easily have gotten one some time during the several months of investigation.

Mr. NELSON. As a matter of fact, the grand jury is in session all the time, is it not?

Mr. WATSON. Pretty nearly all the time.

Mr. CARLIN. Is it any part of your duty as an employee of the Journal to look after the interests of the public in matters of this sort?

Mr. WATSON. As I have said, I have been with the newspaper for nearly 17 years, and I have never found there was a time yet that we see anything being done that operates against the public that my

paper was not ready to investigate and spend unlimited money to make investigations, and if there was evidence of crookedness turn it over to the properly constituted authorities and help that properly constituted authority in every way.

Mr. CARLIN. Has your paper made any investigation of the indictment found against Rae Tanzer and the circumstances surrounding that?

Mr. WATSON. That I can not answer, because recently I have not been much in touch with the news end of the paper. You asked me a while ago why I thought Mr. Marshall did not go ahead. Mr. Marshall was very busily engaged in the Oliver-Osborne case, and I thought he was so much interested in that that he did not have very much time to think about this. A prosecuting attorney may have 100 cases in his office, and there may be some one case that interests him. He goes after that 1 case and the other 99 are split around among his assistants, as far as they are able to do the work, and the rest are forgotten. It is notorious of any prosecuting attorney's office.

Mr. CARLIN. How came you to conclude he was so much interested in the Oliver-Osborne case?

Mr. WATSON. Well, I read the daily newspapers at the time, and several times when I dropped down to see Mr. Marshall so I could advise him how I was getting along with his postal inspectors, or some turn of the case, I was informed he was in consultation with my good friend Jim Osborne. I remember one day I went to see him—I think I had an appointment and came in the middle of the day—and I waited an hour, because he was very busily engaged in some matter or other, and Jim Osborne came out before I went in. It was a case in which the public was very much interested, and I suppose Mr. Marshall was very much interested, too.

Mr. NELSON. Mr. Osborne was also interested in it, was he not?

Mr. WATSON. I dare say both Oliver and James.

Mr. CARLIN. You have never seen Oliver?

Mr. WATSON. I do not find his name in any of these conveyances.

Mr. CARLIN. Have you any other documentary evidence you wish to give the committee?

Mr. WATSON. I have an awful lot of it, but I do not want to attempt at this time to go any further with you, because I would like to spend a day or two brushing up on this. There is such a vast quantity of it that unless I carefully prepare myself on it I will be in somewhat of a mix up. I want to get it in such shape that you will understand it, and if I should attempt to go through it now without preparing, I am afraid you would not understand it.

Mr. CARLIN. If you have no other matter you want to-day to bring to the attention of the committee you can advise us when you will be ready. You will be excused for the present.

Mr. WATSON. Thank you very much.

TESTIMONY OF ALONZO G. McLAUGHLIN, ESQ., OF NEW YORK CITY.

(The witness was thereupon duly sworn by Mr. Russell, clerk of the subcommittee.)

Mr. McLAUGHLIN. Does the committee wish to question me, or shall I make my statement?

Mr. CARLIN. I will ask if you have any statement you desire to make to the committee with reference to the testimony of Mr. Slater?

Mr. McLAUGHLIN. I have, Mr. Chairman. I am an attorney and counsellor at law of the supreme court in the city of New York, and was admitted to practice there about the year 1888.

In the latter part of September or early part of October, 1913, my client, Julius Strauss, for whom my firm had acted for several years, telephoned me in the absence of my partner and requested that I come to his place of business, 1200 Broadway, at once, as there were representatives of the Government in his place about to make a seizure of books and papers. In the absence of Mr. Stern, who was more familiar with Mr. Strauss's affairs, I went.

When I got there I was ushered into Mr. Strauss's private office, and there found Mr. John W. Clifton, of Washington, and Mr. Robert Y. Slater, both of whom I had never met before. Mr. Strauss introduced me to them. He told me then that the representatives of the Government were outside. I talked with Mr. Clifton a bit. I did not know at the time that he was a lawyer. I thought he was a friend of Mr. Slater's. After some little time I found out that he was a lawyer.

Mr. Strauss took me aside and said: "I wish that you would act with Mr. Clifton in this matter for me, and I hope that you have no objection to associating with him." Then I inquired about Mr. Clifton a bit. Mr. Slater said Mr. Clifton was a distinguished member of the Washington bar, and inasmuch as—

Mr. CARLIN (interposing). I understood Mr. Clifton was an employee of your firm?

Mr. McLAUGHLIN. No, Mr. Chairman. Mr. Clifton had been practically retained by Mr. Strauss directly at the instance of Mr. Slater, before I arrived at the office.

Mr. NELSON. You and Mr. Stern were the regular attorneys?

Mr. McLAUGHLIN. We are regular counsel for Mr. Strauss.

Thereupon I went into consultation with Mr. Clifton, and we both decided that the practical and wise thing to do was to turn over all of our books and papers to the district attorney, and we so advised Mr. Strauss. In fact, we so advised the United States marshal's representative and the representative of the United States district attorney, Mr. Williams, who was there, and with them we superintended the placing of all the books and papers, or as many of them as they wanted at the time, in a taxicab and sent them down to the district attorney's office, with our men and theirs. Mr. Clifton and I went down to the United States district attorney's office.

I had been informed that Mr. Carstarphen had charge of the matter, and we went directly to his room. I knew Mr. Carstarphen personally. I had met him in the office there on business; was introduced to him by Dudley Field Malone. Before that I had also, as he recalled to my mind, met him at the national convention at Baltimore. I was a delegate from New York at the national convention, and Mr. Carstarphen, I think, was there as an alternate.

Mr. E. Bright Wilson, whom I had not met before at that time, I found at Mr. Carstarphen's office.

Mr. NELSON. Was Mr. Clifton there before you got there?

Mr. McLAUGHLIN. No; he went with me.

Mr. NELSON. Did he know Mr. Carstarphen?

Mr. McLAUGHLIN. He had never met him before, apparently, as I was introduced to him by Mr. Wilson.

Mr. NELSON. By Mr. Wilson?

Mr. McLAUGHLIN. By Mr. Wilson; yes. Mr. Wilson did know Mr. Carstarphen. Mr. Wilson had been associated with Mr. Clifton, and I did not know Mr. Wilson at all until that time.

Mr. NELSON. How did Mr. Clifton get into this at that time?

Mr. McLAUGHLIN. Mr. Clifton told me, and I know only what he told me, that he had been called there by Mr. Robert Y. Slater.

Mr. NELSON. You think Mr. Wilson got in at the time?

Mr. McLAUGHLIN. Mr. Clifton, before I had arrived at Mr. Strauss's office, had telephoned to Mr. Wilson, who was a New York lawyer, and asked that he associate himself with him—Mr. Clifton. The four of us then went into session—or the three of us with Mr. Carstarphen, and I was the spokesman. I said to Mr. Carstarphen: "I do hope, Mr. Carstarphen, you will not proceed to indict this man and ruin him without giving us a chance to present to you all the facts, or if you have the facts that you think sufficient to put before the grand jury that you give us an opportunity to explain this matter, because it is involved."

Mr. Carstarphen then said: "It will be the policy of this office, under this district attorney, not to indict first, but to investigate first," and that policy, he told me, had been adopted because Mr. Marshall had been on the other side of the proposition a good bit while Mr. Wise was district attorney, and had gone in there representing a man who had been indicted, and by reason of the indictment forced to settle a case which they thought they should not have been forced to settle.

So we all tried as hard as we could—Wilson, Clifton, and myself—to induce Mr. Carstarphen to give us every opportunity to present our side of the case. We found a willing ear, because he said it was to be the policy of the office. Thereupon we turned over to him all the books and papers, and on that day and on many days thereafter one or two or more of us were in session with Mr. Carstarphen, Mr. Williams, of the United States attorney's office, and Special Service Inspector Brooks, of the Treasury Department, going into facts and figures, and they conducted their own independent investigation.

I produced before them accountants, auditors, and our office book-keepers at Strauss's place, and agreed to produce anybody and everybody and everything that they wanted. I am certain, as certain as man can be, that they have been into the Strauss case as thoroughly as it possibly could be gone into. There never was at any time any suggestion that this case should be changed from a criminal action or proceeding to a civil proceeding. All that was asked and all that was given was fair consideration to the case.

Mr. Clifton practically was retained through me, because I was asked whether I objected to acting with him. Such money as he received he received through me. I was paid. I paid him. He is still retained in the case. I am still retained in the case. The matter is still pending. In about June, 1914, the Government began an action for about \$400,000 in duties, penalties, and interest against the Strauss corporation, and that action is now pending.

For the past two months or more a man has been under examination, brought from England—examination under interrogatories. I think. Mr. Stern is conducting that examination. They are now working on interrogatories to go to Austria for the examination of Austrian witnesses. These are almost settled and agreed upon. They have to be settled by the court ultimately, and I think there is perhaps a week before they will be settled. The case was set for trial in June, but it will probably be a physical impossibility to get those interrogatories back before the fall, when it will go on at once.

The chairman asked a question about the statute of limitations running, while Mr. Clifton was on the stand. The five-year statute applies here. The statute will not run out for at least 18 months. and perhaps more.

I think I have generally covered the situation. If there is anything you would like to ask me, I will be glad to answer.

Mr. NELSON. There was nothing paid other than the formal fees?

Mr. McLAUGHLIN. Formal fees were paid.

I may say there was a question asked by the chairman, or by you. Mr. Nelson, this morning about an agreement between the Austrian Government and Strauss. There was such an agreement.

Mr. NELSON. What was it?

Mr. McLAUGHLIN. That agreement was made between this Government institution, which manufactures and collects Austrian lace from the peasant girls through the mountains and gives it the backing of Government authority. That agreement was made with Strauss. and is an agreement of sale of the entire output of the Austrian industry to the Strauss corporation of the United States in the United States of America. That is, nobody else here was to be sold but Strauss. In view of his taking over this gigantic output at that time, he had a price made him, and the whole controversy here is what was fair market value at the place of manufacture and sale. There is a wide difference of opinion among experts as to what that "fair market value" is. Mr. Clifton stated that the amount in question was possibly \$70,000. I do not think it is quite as much as that—duties that the Government claims it was defrauded out of. It does not now claim it was defrauded at all. It claims there was an unintentional undervaluation, but it goes on to state that it is a 40 per cent undervaluation. In an effort to test that the Treasury Department brought about a reappraisal of two bundles of lace which had been seized at about this time, about the time the investigation started. They were reappraised before General Appraiser Cooper. I think, and as a result of that investigation by him, or the hearing before him, and without taking testimony at all in Austria, the Government advanced the value 10 per cent. That would reduce the claim, even on the basis of \$70,000, by three-fourths, and one who is familiar with customs matters, and particularly with the question of the value of laces, would tell you gentlemen, I think, that it is impossible to detect a difference of 10 per cent in the valuation of laces. If it gets as close as that it is nugatory.

Mr. CARLIN. That is all, thank you; you may be excused, Mr. McLaughlin.

(Thereupon, at 4.15 o'clock p. m., on Monday, April 24, 1916, the committee adjourned subject to call of the chairman.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Saturday, April 29, 1916.

The subcommittee met, pursuant to notice, at 11.15 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding) and Hon. John M. Nelson.

FURTHER TESTIMONY OF CARL E. WHITNEY.

(The witness, having been previously duly sworn, further testified as follows:)

Mr. CARLIN. Mr. Whitney, you have been recalled at the request of Mr. Buchanan in this case. Mr. Walsh [addressing Mr. Walter J. Walsh], I understand you have some questions you want to ask Mr. Whitney?

Mr. WALSH. Yes.

Mr. CARLIN. If you have, will you please proceed.

Mr. WALSH. Mr. Whitney, you have been called to give some testimony, and have given some already before the committee, and there are some further questions that I would like to ask you.

How long have you been practicing in the Federal courts in New York?

Mr. WHITNEY. About 10 years.

Mr. WALSH. Have you had much to do with the United States district attorney's office?

Mr. WHITNEY. Well, I was an assistant in that office for over three years and a half. I served under both Mr. Wise, and about three months under Mr. Marshall.

Mr. WALSH. And when did you leave the office?

Mr. WHITNEY. My resignation took effect in July, 1913, I think, around the middle of July.

Mr. WALSH. Since then have you had business relations with that office?

Mr. WHITNEY. You mean, have I had cases in which that office was interested?

Mr. WALSH. Yes.

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Have you become acquainted with the members of the staff that are now in that office?

Mr. WHITNEY. Yes; I think I know all of them.

Mr. WALSH. You do know all of them?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Do you know Mr. Osborne?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. That is, an assistant there?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Is he any relation to one James W. Osborne, of New York?

Mr. WHITNEY. My evidence on that point would be common report; not a matter of knowledge. I understand he is Mr. Osborne's nephew.

Mr. WALSH. Do you know one Mr. McDonald, an assistant United States district attorney?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. And is he related in any way, by marriage or otherwise, according to common report, generally accepted, to Senator O'Gorman?

Mr. WHITNEY. His brother is one of Senator O'Gorman's sons-in-law.

Mr. WALSH. Do you know Attorney Stanton, of that office?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Is he related to Senator O'Gorman?

Mr. WHITNEY. You understand, Mr. Walsh, that I am giving you—these are not matters of my own knowledge; they are only matters of common report. He is Mr. O'Gorman's nephew.

Mr. WALSH. Is that generally understood among the members of the New York bar?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. That these relations exist?

Mr. WHITNEY. Yes, sir; he is the Senator's nephew.

Mr. WALSH. Do you know Roger P. Wood, Mr. Content, and Mr. Sarfaty?

Mr. WHITNEY. Yes; I know all those men.

Mr. WALSH. Were they related in any business way with Mr. Marshall before they went into Mr. Marshall's office as assistant United States district attorneys?

Mr. CARLIN. That all appears of record, Mr. Walsh.

Mr. WHITNEY. My answer would be "yes."

Mr. CARLIN. They were employees of Mr. Marshall's office, the record shows.

Mr. WHITNEY. Yes, sir; they were.

Mr. WALSH. Do you know a Mr. Yazzelli?

Mr. WHITNEY. Yes, sir; I know Mr. Yazzelli.

Mr. WALSH. And do you know one Mr. W. E. Bier?

Mr. WHITNEY. No, sir.

Mr. WALSH. Perhaps the pronunciation is wrong. Baer, is it?

Mr. WHITNEY. Mr. W. C. Beer?

Mr. WALSH. Beer?

Mr. WHITNEY. Yes, sir; I know him.

Mr. WALSH. Do you know whether or not Mr. Yazzelli was ever associated with Mr. Beer?

Mr. WHITNEY. I have heard that he was; yes, sir.

Mr. WALSH. In what way were they associated?

Mr. WHITNEY. Well, I think Mr. Yazzelli's brother is now employed by Mr. Beer. What Mr. Yazzelli's connections with Mr. Beer were I do not know. Mr. Beer, I believe, is an attorney, although he does not practice.

Mr. WALSH. Is Mr. Beer connected with the J. Pierpont Morgan concern?

Mr. WHITNEY. You are getting into the realm of hearsay.

Mr. WALSH. I mean is it generally accredited that he is?

Mr. WHITNEY. I have heard that.

Mr. NELSON. Is Mr. Beer an assistant district attorney?

Mr. WHITNEY. No, sir.

Mr. NELSON. Who is Mr. Beer, Mr. Walsh? What is his position?

Mr. WALSH. What is his business now?

Mr. WHITNEY. He is a lawyer at 71 Broadway, although Mr. Beer told me a long time ago—I do not think he is engaged in practice at all, sir.

Mr. WALSH. But he is a man with whom Mr. Yazzelli was formerly associated?

Mr. WHITNEY. They had some connection; what it was I do not know.

Mr. WALSH. Before Mr. Yazzelli went into the United States district attorney's office?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Do you know Mr. James Gordon Battle?

Mr. WHITNEY. His first name is "George," I think.

Mr. WALSH. George, is it?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. He is a member of what firm?

Mr. WHITNEY. He is a member of the firm of O'Gorman, Battle & Vandiver.

Mr. WALSH. Does that firm, from your knowledge, do any criminal business in the Federal courts?

Mr. WHITNEY. Both civil and criminal; yes, sir.

Mr. WALSH. Is there any particular member of that firm who handles the criminal business in the Federal courts?

Mr. WHITNEY. Mr. Battle, I believe, handles most of it, although Senator Quinn was associated with me recently on a criminal trial and I believe Mr. Levy of that firm handles some criminal work.

Mr. WALSH. That firm is the firm that Mr. Marshall came from, is it not, when he took the office of United States district attorney?

Mr. WHITNEY. The firm, I think, when he took the office was O'Gorman, Battle & Marshall, and Mr. Vandiver took Mr. Marshall's place. That is what I have supposed.

Mr. WALSH. Can you tell us how extensively that firm practices in the criminal Federal courts in New York?

Mr. WHITNEY. Well, I should say they have a good practice.

Mr. WALSH. Were you familiar with their practice in the Federal courts before Mr. Marshall became United States district attorney?

Mr. WHITNEY. Well, I think that most every member of the bar—the Federal bar knows pretty much about—not the details, perhaps, but pretty much what the other members are doing, and in that way I was.

Mr. WALSH. From your knowledge, as a member of the bar and in active practice, can you give the committee any information as to the relative amount of practice that that firm did before Mr. Marshall became United States district attorney, and after he became United States district attorney?

Mr. WHITNEY. Well, I would say that their practice increased after; I think so.

Mr. WALSH. Is it not generally reported and considered by the members of the New York bar that their practice has increased considerably?

Mr. WHITNEY. I have heard that stated by members of the bar; yes, sir.

Mr. WALSH. Did you know anything of a case of the United States versus one Sciamia?

Mr. WHITNEY. Yes, sir; and I would like to state what that connection was, with your permission.

Mr. WALSH. I would be glad to have it, if the committee will permit you.

Mr. CARLIN. Yes.

Mr. WHITNEY. Two members of that firm were indicted on a conspiracy count, with a man by the name of Stager, who was an employee of the Government. On the trial of Stager I defended Stager, who was jointly indicted with Sciamia and with a man by the name of Silva.

Mr. CARLIN. What was the charge against them?

Mr. WHITNEY. Conspiracy to defraud the customs—defraud the revenue. That was, briefly, it.

Mr. WALSH. Then, I take it, Mr. Whitney, you are familiar of your own knowledge with the details of that case, are you?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Then, perhaps you could tell us the outcome of that case; what was the result of it?

Mr. NELSON. First, I would like to know whether this was while Mr. Marshall was district attorney?

Mr. WHITNEY. Yes, sir. Well, George Silva was the manager in New York of the house of Sciamia & Co., importers of feathers. That corporation of Sciamia & Co. violated the customs laws. Their place was seized, their books taken; a civil action was commenced against that firm for a large sum of money, and this gentleman, whom I represented, Mr. Stager, a Government employee, was jointly indicted with Silva for a conspiracy to defraud the United States. Silva was indicted separately on a number of different charges, all of which had to do with violating revenue laws. The United States severed the indictment against Stager, and put Stager on trial, and he was convicted, and his appeal was recently argued in the circuit court of appeals. The civil action against Sciamia & Co. was settled. Mr. Silva plead guilty to the indictments against him. Mr. Sciamia was never in this country; that is, never since these proceedings were brought, so he has not plead to those indictments.

Mr. WALSH. Can you tell me the amount the Government claimed in that civil action?

Mr. WHITNEY. Well, it was upwards of two hundred and fifty or three hundred thousand dollars; somewhere in that neighborhood. It was a very large sum of money.

Mr. WALSH. Was that civil action settled?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. By the payment of a sum of money?

Mr. WHITNEY. Yes.

Mr. WALSH. And can you give us any idea what that sum was?

Mr. WHITNEY. Well, I have heard. I think it was in the papers—common rumor and report that the Government received \$111,000.

Mr. WALSH. And who was counsel for Sciamia in the settlement of that civil action?

Mr. WHITNEY. That was handled by the firm of O'Gorman, Battle, and Vindiver.

Mr. WALSH. Was there any common report among the bar in New York as to the amount of fees that that firm got in the settlement of the case, or for their handling of that case?

Mr. WHITNEY. I would not say that there was any "common report"; no, sir.

Mr. WALSH. Did you hear or know yourself of the amount of fee they got for the handling of that case?

Mr. WHITNEY. Yes, sir; I did hear.

Mr. WALSH. Will you tell us the amount?

Mr. WHITNEY. I heard they received \$45,000.

Mr. NELSON. Did you say they plead guilty to the indictment?

Mr. WHITNEY. Mr. Silva plead guilty; yes, sir.

Mr. NELSON. And what was the sentence?

Mr. WHITNEY. He was fined—there were several indictments against Mr. Silva.

Mr. NELSON. In this case?

Mr. WHITNEY. Yes; the one where he was jointly indicted with the man whom I defended; another two or three where he was indicted for undervaluation, where my client was not involved at all, and another one for making false returns to the income tax. There were at least four indictments, I think.

Mr. NELSON. What happened in each case?

Mr. WHITNEY. In the case where my client was convicted, and got a \$500 fine and 30 days in jail, he was fined, I think, a dollar.

Mr. CARLIN. Did he get any jail sentence?

Mr. WHITNEY. Yes, sir; I think he paid a \$5,000 fine on one of the customs cases, and 30 days in the Tombs on one of the other cases.

Mr. CARLIN. There was no difference between the treatment of your client and that of O'Gorman, Battle & Vandiver's client? Both got about the same medicine?

Mr. WHITNEY. Not on the same indictment, Mr. Carlin; not on the same indictment.

Mr. CARLIN. But on another indictment, all growing out of the same transaction?

Mr. WHITNEY. Yes.

Mr. WALSH. Now, Mr. Whitney, did you know of any proceedings taken by the United States district attorney's office of New York in connection with the so-called "drug and cigar store merger"?

Mr. WHITNEY. You ask: Do I know. Those are matters of common knowledge. How I obtained it, except through general talk and through the newspapers, I could not tell. I did have knowledge that there was such a merger; yes, sir.

Mr. WALSH. Did you have knowledge of any proceedings taken by the United States district attorney's office in connection with such a merger?

Mr. WHITNEY. Well, I knew that such a merger was before the district attorney's office. That was in the newspapers, and common talk; yes, sir.

Mr. WALSH. And in what way was it before the district attorney's office? Were they investigating it with a view of bringing some criminal complaint or criminal proceedings against them?

Mr. WHITNEY. I suppose somebody had complained; I understood somebody had complained against this merger. You refer to the Liggett & Myers-Riker-Hegeman-United Cigar Stores merger?

Mr. WALSH. Yes, sir.

Mr. CARLIN. That never took place, did it?

Mr. WHITNEY. Yes, sir.

Mr. CARLIN. It was the United Drug Stores and Riker-Hegeman that were actually merged, was it not?

Mr. WHITNEY. The Liggett & Myers, Riker-Hegeman, and the United Cigar Stores interests formed the United Drug Co., as I understand it. The merger took place.

Mr. WALSH. Was there ever any prosecution or any effort made by the district attorney's office to prevent that merger?

Mr. WHITNEY. I could not tell you what effort was made. The merger took place.

Mr. WALSH. Did you know who represented the United Cigar Stores and the drug companies?

Mr. WHITNEY. Yes.

Mr. WALSH. Who was it that represented them?

Mr. WHITNEY. O'Gorman, Battle & Vandiver.

Mr. WALSH. And that was while Mr. Marshall was United States district attorney, was it not?

Mr. WHITNEY. Oh, that was recently.

Mr. WALSH. How recently?

Mr. WHITNEY. Oh, within the last six or eight months.

Mr. WALSH. Did you hear some discussion or talk or report among the members of the bar in New York as to the amount of fee that was obtained by that firm in the settlement of that matter?

Mr. WHITNEY. Yes; I have heard that.

Mr. WALSH. And will you tell us the amount that you have heard that firm obtained for the settlement of that matter?

Mr. WHITNEY. Well, you are asking me now for hearsay, Mr. Walsh. I can not tell you what that firm received.

Mr. CARLIN. Unless you have some reliable information on that subject, you need not go into it, but if you have, you may state it.

Mr. WHITNEY. It was commonly reported that they received upward of \$50,000; I have heard it stated at fifty or sixty thousand dollars.

Mr. NELSON. Did you ever have any talk with any member of the firm with reference to the fees they received in these cases?

Mr. WHITNEY. No, sir.

Mr. NELSON. Is your source of information in any way direct?

Mr. WHITNEY. Referring now to the Silva case?

Mr. NELSON. Yes; referring to the Silva case.

Mr. WHITNEY. Yes, sir.

Mr. NELSON. What was it?

Mr. WHITNEY. It was from Mr. Silva to Mr. Stager.

Mr. NELSON. And in this other case, have you any recollection of the source of your information?

Mr. WHITNEY. I have not, Mr. Nelson. It is one of those things, you know, where you go to the Federal building and you meet some attorney and you will talk about everything, and who may have told me a thing of that kind I do not know, but the other case I do know.

Mr. NELSON. Do you give any credence to it yourself? Was it of such a character—the information—that you accredited it?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. Would you say it was generally believed by the bar in New York that such an amount was paid?

Mr. WHITNEY. I would not say what was believed by the bar in New York generally. That is a pretty broad statement. We have got 10,000 members of that bar over there, and what they generally believe I am not going to try to tell.

Mr. WALSH. Is there any particular firm that seems to do more criminal business or which seems to represent more persons or concerns accused of crime before the United States district courts than any other?

Mr. WHITNEY. I see Mr. McQuillan here, a post-office inspector, who would probably have more knowledge on a thing of that kind than I would have. My knowledge is general on that subject, as a practitioner in the court.

Mr. WALSH. I am asking for your knowledge on that matter.

Mr. WHITNEY. Just at present, with this German propaganda, I should say Mr. John Stanchfield had at least all he is entitled to of that kind of practice—that is, the German propaganda. There is also—of course, Mr. Battle's firm has a large Federal practice, both on the civil and criminal side of the court.

Mr. WALSH. Are there any other large cases now that you know of yourself that have been settled with the United States district attorney's office through the firm of O'Gorman, Battle & Vandiver, if that is the name?

Mr. WHITNEY. No, sir; I do not.

Mr. WALSH. Are you familiar with the custom that seems to prevail in the United States district attorney's office of sending out call cards for persons to appear before the assistant district attorneys for the purpose of obtaining information from them?

Mr. WHITNEY. I have heard that such cards were sent out and also that subpoenas were sent out. Whether they use the cards now or not I do not know, sir.

Mr. WALSH. Did they use the cards when you were there?

Mr. WHITNEY. I think those cards were first used in the late spring or early summer of 1913.

Mr. WALSH. Those cards, as I understand it, were merely requests to call?

Mr. WHITNEY. That is all. It saves the assistant from writing a letter, that is all.

Mr. WALSH. Would persons who would be summoned in that way be entitled to witness fees?

Mr. WHITNEY. Oh, no.

Mr. WALSH. Have they, as a matter of fact or as a matter of custom, according to your knowledge, been receiving witness fees?

Mr. WHITNEY. I have heard they have. I have no knowledge on that.

Mr. WALSH. And to what extent? Would you say that that was a common practice in that office?

Mr. CARLIN. That what was a common practice?

Mr. WALSH. Of paying persons summoned by card—giving them witness fees.

Mr. WHITNEY. I would have to say that I do not know as to that.

Mr. WALSH. Did they do that when you were there?

Mr. WHITNEY. My recollection is that that was done in the late spring or early summer of 1913, and I left active connection with the office in the middle of June. I think those cards were in the office when I left; I know they were.

Mr. WALSH. Is there any warrant, that you know of, or any authority, for the payment of such fees to persons so called by card?

Mr. WHITNEY. Oh, no.

Mr. NELSON. Do you know of any case where fees were paid where they were summoned by card?

Mr. WHITNEY. Nothing, except hearsay, Mr. Nelson.

Mr. WALSH. Were you counsel in the case of the United States v. Philip Sencer, recently tried in New York?

Mr. WHITNEY. Yes, sir; I was.

Mr. WALSH. Whom did you represent in that case?

Mr. WHITNEY. I represented Jacob and Michael Weisz, who were jointly indicted with Sencer and a man by the name of Kaplan.

Mr. WALSH. That case you tried before whom?

Mr. WHITNEY. Judge Howe, of Vermont.

Mr. WALSH. Now, on the trial of that case, did it appear, either by evidence or in some other way, that there had been some irregularity with one of the warrants against Mr. Sencer?

Mr. WHITNEY. There did; yes, sir.

Mr. WALSH. Will you tell that to the committee, please?

Mr. WHITNEY. A commissioner's warrant had been issued on a complaint sworn to by a Department of Justice agent by the name of Jentzer. That warrant called for the arrest of four men: Jacob Weisz, Michael Weisz, Louis Kaplan, and Joseph Barballat. I think the complaint was sworn to on the 23d or 24th of June, 1915. When the officers went to the place of business of the Weiszes they arrested Jacob Weisz, the old man, 60 years old, and they found in the place of business this young man Sencer, a young man, I should think, 23, 24, or 25 years old. They took Mr. Sencer to the Federal building, told him that they took him there as a witness, and when he got there the stories differ as to what occurred, but the substance of it was that he declined to make any statement to the district attorney. The assistant district attorney having that case in charge sent for the original complaint, which, I think, was in the hands of the commissioner at that time, and inserted Mr. Sencer's name in the title and in the body of the complaint.

Mr. NELSON. Who was that assistant?

Mr. WHITNEY. Mr. Yazzelli. On a copy of the complaint—it is the custom in our district to annex a copy of the complaint to the warrant, annexed across the top on the face of the warrant. The name of Mr. Sencer was inserted in that carbon copy of the complaint which was annexed to the warrant, in the title and in the body of the complaint. Mr. Sencer's name was never inserted in the warrant at any time, and is not in it now—when I introduced it in evidence on the trial of this case. Sencer was arraigned before the commissioner, was held in \$5,000 bail; no complaint had ever been sworn to against him; no process had ever been issued. He was later indicted by the Federal grand jury, along with the others, and, on the trial, he was acquitted.

Mr. WALSH. Who represented Mr. Sencer?

Mr. WHITNEY. While, as a matter of record, Mr. Palmer represented Mr. Sencer, I was retained by Mr. Palmer, and practically conducted the case for all four defendants.

Mr. WALSH. Were all four defendants acquitted?

Mr. WHITNEY. No; the other defendants were convicted.

Mr. WALSH. Do you know anything, Mr. Whitney, about the subpoenaing of one Carl Hand and Oscar Quiroga?

Mr. WHITNEY. I do know of that; yes, sir.

Mr. WALSH. Do you know of their being taken off a steamer at 9 o'clock in the morning, and forthwith subpoenaed to appear before the grand jury?

Mr. WHITNEY. They were taken, I think, from the dock, Mr. Walsh, just after having landed from the steamer.

Mr. WALSH. And were they actually taken into custody by the United States marshal?

Mr. WHITNEY. Mr. Quiroga was taken into custody. Hand is a man of rather heroic build, and they did not take him into custody; no, sir.

Mr. WALSH. As a matter of fact, was there any grand jury in session at that time, or any proceeding of any kind pending in the southern district of New York or in the city of New York, in which those men could possibly have appeared as witnesses?

Mr. WHITNEY. No, sir; there was not.

Mr. WALSH. Were those men interested in the defense of a man who was indicted in the district of Delaware?

Mr. WHITNEY. If you want that incident, and know something about it, I suppose I might as well briefly tell the committee what it was.

Mr. CARLIN. Yes; tell it in your own way, Mr. Whitney.

Mr. WHITNEY. A man by the name of McCune was indicted in the district of Delaware for a scheme to defraud by the use of the mails, in connection with an alleged Peruvian gold mine. After McCune's indictment, the Government sent a representative of the Post Office Department, Mr. Barber, and an engineer to Peru. Mr. McCune's attorney sent Mr. McCune and an engineer to Peru. Mr. McCune and his American engineer, Mr. Carl Hand, and Mr. Oscar Quiroga, a Peruvian engineer in the employ of the Peruvian Government, returned to New York after making that investigation. The Government had received a cable from Panama that Mr. Hand and Mr. Quiroga and Mr. McCune were on their way to the United States. There was no proceeding pending in the southern district of New York. When Mr. Hand and Mr. Quiroga and Mr. McCune landed from the steamer, Hand and Quiroga were served with a subpoena ad testificandum—a subpoena to testify—to appear forthwith before a grand jury in the southern district of New York. That was about 10 minutes to 9 o'clock in the morning. Mr. Quiroga, who spoke no English whatever, was taken into custody by a deputy marshal and taken to the post-office building. Mr. Hand, as I say, was an American, who could not be bluffed, and he said he would appear when the grand jury was in session, but he was not going then, and he was not taken. Later Mr. Quiroga was released, under the instructions of the United States attorney. There was no proceeding pending; no complaint pending in that district.

Mr. NELSON. Who issued the subpoenas? What was the occasion for that?

Mr. WHITNEY. The United States attorney for the district of Delaware had called upon the United States attorney for the southern district of New York to subpoena these two engineers to come before the United States grand jury in the southern district of New York, in order to get their evidence, so that when the Delaware case went to trial, the United States attorney in the district of Delaware would know what our engineers were going to testify to.

Mr. CARLIN. It was a conspiracy to get the testimony of the defense; is that the way?

Mr. WHITNEY. Absolutely.

Mr. NELSON. You say the district attorney ordered the discharge of this Peruvian?

Mr. WHITNEY. Yes, sir.

Mr. NELSON. What is your knowledge of that?

Mr. WHITNEY. My information is that the letter from the United States attorney for the district of Delaware went, in the usual course of business, to the head of the criminal department in the United States attorney's office in New York, and was by the head of that department referred to one of the other assistants to take these men before the grand jury. I went to the post-office building, but I could not learn where Quiroga was. I knew he was in a room in the district attorney's office, but in what room I did not know, and I could not find out until one of the employees in the building told me what room he was in. They had him in there with an interpreter, endeavoring to get a statement from him, but he was wise enough not to answer any question, so I understand.

Mr. NELSON. You mean, some assistant in the district attorney's office?

Mr. WHITNEY. Yes, sir; an assistant. The facts were brought to the attention of Mr. Marshall, and he issued instructions that, pending an investigation by him, these men should not be called before the grand jury, and I understand that he did investigate it, because they never were called.

Mr. WALSH. Mr. Whitney, were you the counsel who actually handled the Bard & Keen cases that were investigated by the United States district attorney's office?

Mr. WHITNEY. Well, I am associated with Mr. Wise. Mr. Wise was their attorney. I did some work in that case.

Mr. WALSH. Will you briefly outline that case, as you understood it, for the benefit of the committee?

Mr. WHITNEY. You want just——

Mr. WALSH (interposing). Just tell your connection with the case, and a general history of the case from the beginning until its end, if you will, briefly.

Mr. NELSON. Particular with reference to Mr. Marshall's office and the connection of his office, either through himself or his assistants, of course, with the case.

Mr. WHITNEY. Mr. Wise was retained as the attorney for these men. Shortly after Mr. Wise had had a conference with them, I had a long conference with Mr. Keen and Mr. Bard, in which they laid the facts before me. They told me at that time of a visit

which had been paid to them by an assistant United States attorney. Naturally, they gave their own version of what occurred at that visit.

Mr. NELSON. What was the version, as they gave it to you?

Mr. WHITNEY. Their version was that Mr. Wood went to their office—I think only one of them was in at that time when he went there—and demanded the return of certain property; announced that he was an officer of the Department of Justice, or words to that effect, and demanded the return of certain property, and one of these men—I think it was Mr. Keen—told me that he had said to Wood that if he had any proper process, or if he appeared there in his official capacity, why, they would give it to him. The interview was a stormy one, and Wood was told to leave the office. That was the version, briefly, which they gave me. After conferring with Mr. Bard and Mr. Keen, I went to the district attorney's office. I understood that the matter was then being presented to the grand jury, or was about to be presented. I felt that if what they said was so, if the statements they had made to me were true, that they had not violated any Federal statute, and they plead strongly that they were being proceeded against for some purpose which was not proper. Mr. Bard and Mr. Keen felt that way.

Mr. NELSON. Right there, what did Mr. Wood represent to them was the nature of their guilt when he called upon them? What had they done to violate a Federal law, as he explained it to them then?

Mr. WHITNEY. When he called upon them, Mr. Nelson, at the time that I was telling you about, it was not with regard to their guilt or innocence; it was with regard to the return of some property to a client whom he represented.

Mr. NELSON. How long afterwards was the matter that you are now speaking of?

Mr. WHITNEY. Why, two weeks or three weeks.

Mr. NELSON. In the meantime, then there had been some steps taken toward an indictment?

Mr. WHITNEY. Yes. I think Mr. Wood or Mr. Hershenstein, of that office, was investigating—one of them was investigating this complaint against these men.

Mr. NELSON. Was Mr. Wood investigating it? Do you know that of your own knowledge?

Mr. WHITNEY. Of my own knowledge? No; I do not know it, except what they told me.

Mr. NELSON. What Mr. Wood told you?

Mr. WHITNEY. No; what Mr. Bard and Mr. Keen told me.

Mr. NELSON. Mr. Wood called the first day with reference to a civil suit?

Mr. WHITNEY. Yes, sir.

Mr. NELSON. Did he ever subsequently call upon Bard & Keen?

Mr. WHITNEY. No, sir. You mean at their place of business?

Mr. NELSON. Yes; at their place of business.

Mr. WHITNEY. No, sir.

Mr. NELSON. Or elsewhere?

Mr. WHITNEY. No, sir. I say, after these men had made this statement, I went to the district attorney's office and I told him that Mr. Wise would like to confer with him in regard to these clients

of his, and I think I saw at that time, that same day I was up there, Mr. Hershenstein, and told him that I had seen Mr. Marshall and asked him to defer action; that from the facts as presented to me these men were innocent. I saw Mr. Wood that same day, and I told him that I thought the men were innocent, and he rather forcefully stated that they were not; that they were the biggest pair of crooks in New York; but having been in the district attorney's office, I knew that he was speaking from the attitude of the prosecutor; that he thought these men were guilty. The outcome of the case is familiar to you. Mr. Wise has outlined it—that Mr. Marshall did refer this to Mr. Wemple; that an investigation was made, and that Mr. Wemple decided—and I think Mr. Marshall decided—that these men were not guilty of any Federal offense. Then the same man who had complained against them in the Federal court, before the case had actually been dismissed in the Federal district attorney's office, complained to the county district attorney's office, and I had to present the facts to the county district attorney, and I did that to an assistant up there. No proceeding was ever taken against them there.

Mr. WALSH. As a matter of fact, from your investigation of that case, or your handling of it from start to finish, did you know that there was even anything of a criminal nature in anything that these men had done, or that anyone had charged them with doing?

Mr. WHITNEY. I do not understand that question, Mr. Walsh.

Mr. WALSH. Well, perhaps not; it might be a little involved.

Mr. WHITNEY. Take the last part of it off and I can answer it.

Mr. WALSH. Supposing you answer the first, then. From your investigation, what would you say as to whether or not there was any evidence that these men had done anything of a criminal nature?

Mr. WHITNEY. I have never seen any. I do not believe any exists.

Mr. WALSH. Did anyone charge them with doing any specific acts that they characterized as criminal?

Mr. WHITNEY. Never that I know of.

Mr. NELSON. Just what was the charge?

Mr. WHITNEY. The charge was that they had devised a scheme to defraud by the use of the mails. It was a commissioner's complaint, and a very loosely drawn affair, upon which these men were arrested. You may or may not know, but commissioners' warrants are issued upon complaints which are sworn to before the commissioner, and are prepared by the assistant having charge of the case, and it does not take much of a complaint to cause a commissioner to issue a warrant. In other words, the commissioner has issued warrants, and does issue warrants, right along upon complaints which are not very specific. That has been a practice there for years.

Mr. WALSH. As a matter of fact, had these men used the mails in the prosecution of their business?

Mr. WHITNEY. Just in the ordinary course of business; yes, sir.

Mr. WALSH. In their ordinary correspondence?

Mr. WHITNEY. That is all.

Mr. WALSH. They did not use the mails for the sending of these films back and forth?

Mr. WHITNEY. Oh, no; not at all.

Mr. WALSH. How did they send them?

Mr. WHITNEY. By express. You can not send those things through the mails; they are inflammable material—explosives.

Mr. WALSH. Were either or both of these men actually taken into custody?

Mr. WHITNEY. Oh, yes; and locked up. Mr. Bard was locked up over night; a most outrageous thing, from my standpoint.

Mr. WALSH. How much bond was he put under?

Mr. WHITNEY. Five thousand dollars bail.

Mr. WALSH. Was Mr. Keen locked up?

Mr. WHITNEY. No; he surrendered himself voluntarily. They demanded \$10,000 in Keen's case, and after a protest by me it was reduced by the commissioner to the small sum of \$7,500.

Mr. NELSON. You say "they"; whom do you mean?

Mr. WHITNEY. Mr. Samuel Hershenstein.

Mr. NELSON. Was Mr. Marshall there?

Mr. WHITNEY. I could not say as to that. He was not present in the commissioner's room.

Mr. NELSON. You have no knowledge of his having had anything to do with it?

Mr. WHITNEY. I have not.

Mr. NELSON. Would it be likely, from your experience in that office, to consult his chief with reference to a case of that kind?

Mr. WHITNEY. You mean Hershenstein?

Mr. NELSON. Yes.

Mr. WHITNEY. Hershenstein should have consulted, in the district attorney's office, as it was in my day, the head of the criminal bureau, Mr. Wood.

Mr. NELSON. Especially before he demanded a bond or sent him to jail?

Mr. WHITNEY. Yes, sir. If Mr. Wood—I am speaking now not of what they do now but what they would have done in my day.

Mr. NELSON. Yes.

Mr. WHITNEY. If one of the junior assistants had a matter of that kind he would usually confer with the head of his department. If it was a matter which they deemed an exceedingly grave or serious one they would confer with Mr. Wise, the United States Attorney.

Mr. NELSON. In that case who was the head of the department?

Mr. WHITNEY. In the days when I was there?

Mr. NELSON. No; now?

Mr. WHITNEY. Mr. Wood.

Mr. NELSON. So that Mr. Hershenstein, being a junior assistant, in all probability, under the practice as you knew it, would have consulted Mr. Wood?

Mr. WHITNEY. I think he did, sir. My understanding is now that he did—had done it at that time.

Mr. WALSH. You said, Mr. Whitney, that Mr. Bard was locked up overnight?

Mr. WHITNEY. Yes, sir.

Mr. WALSH. I understood this to be the fact; that he was arrested on a Saturday afternoon and kept in custody until the following Monday morning; is that wrong?

Mr. WHITNEY. Yes.

Mr. WALSH. When was he taken into custody and when was he released?

Mr. WHITNEY. I think he was taken into custody—I think the committee ought to know the facts there. Bard was in the district attorney's office on an afternoon around 3 o'clock, and was asked—he had been there frequently, and he was—or he asked if they wished him to come back again. They said, "No"; that they would let him know when they wanted him. Around 4 o'clock, or after 4 o'clock that same day, he was arrested, and, as your honor may know, it is pretty hard work to get bonds after that hour of the day; a man arrested after 4 or 5 o'clock, or around that time, would have difficulty in securing a bond. If he was arrested after 4 he would be brought down there around 5 and it would be a pretty hard thing to get a bond. They had cash and offered to deposit cash, but the commissioner could not take it.

Mr. NELSON. Mr. Bard offered to deposit cash?

Mr. WHITNEY. Five thousand dollars in cash, I think, they offered to deposit. But there was no clerk there to take a bond or anything of that kind, so he went to the Tombs and stayed there that night.

Mr. WALSH. And when was he released?

Mr. WHITNEY. The next morning.

Mr. WALSH. Have you ever heard the statement made that the bonding companies are splitting fees with the United States officers or agents connected with the United States courts?

Mr. WHITNEY. Well, now, Mr. Walsh, you are getting into a realm of hearsay that is like old women's gossip.

Mr. NELSON. I am going to ask you to withdraw that question.

Mr. WHITNEY. I could not give you anything at all in the way of knowledge. I would prefer that you withdraw that question.

Mr. WALSH. I will withdraw it. I wanted to know if you had heard such a claim. That is all. There was another topic, Mr. Whitney, I would like to question you upon. It was along the lines I had asked you concerning in New York, and you did not care to answer them on the ground that they were privileged.

Mr. WHITNEY. Yes, sir.

Mr. WALSH. You still are of that opinion, and you still desire to claim that privilege, do you?

Mr. WHITNEY. Well, suppose you put your question.

Mr. WALSH. Did Mr. Marshall send for you along in November last and have a discussion with you concerning the case of the United States *v.* Lamar?

Mr. WHITNEY. No; Mr. Nelson, I have not received any waiver, either written or oral.

Mr. NELSON. Then you will not be permitted to testify.

Mr. WALSH. I do not desire it.

Mr. WHITNEY. Thank you very much.

Mr. WALSH. I simply wanted to know if the situation had changed any.

Mr. WHITNEY. It has not, Mr. Walsh.

Mr. WALSH. Then, I do not know of any further questions.

Mr. NELSON. I want to ask, Mr. Whitney, just for information—you were in the district attorney's office for some time?

Mr. WHITNEY. Yes.

Mr. NELSON. Now, this is somewhat aside from the matter we are considering, but what is the spirit of the average assistant in that office with reference to prosecutions? You have instanced this matter of requiring bond at this unseasonable hour, of Mr. Bard. Is there not a zeal to convict at once on the part of the assistant district attorneys, or rather a desire to succeed that is somewhat excessive?

Mr. WHITNEY. Well, now, I am going to answer your question frankly, Mr. Nelson, and I may comment upon things which I did myself.

Mr. NELSON. I want to get the spirit with reference to the practice, without so much reference to this case.

Mr. WHITNEY. I think that the average assistant district attorney is a pretty zealous young man, and perhaps the younger he is the more zealous he is. I know in the days when I was in the office some of us were—speaking of myself personally and some of the others—were pretty zealous sometimes. I think the average of age of Mr. Wise's men was a little bit older than some of the men now in the criminal department. I have complained very bitterly about the zeal exhibited by some of the junior assistants on the criminal side of that office, and my complaints are usually met with a jesting remark, that they are not doing any worse than I used to do. I do not agree with them there. I may have, at times, been pretty zealous, but I think that that end of the office, while handled by able young men, they are pretty zealous in their endeavors to secure conviction.

Mr. NELSON. That is to say you are convinced from your experience and observation that there is danger of there being injustice in the Department of Justice in the way of excessive zeal; is that it?

Mr. WHITNEY. I think there is, Mr. Nelson. I think that criticism could fairly be made in a number of cases.

Mr. NELSON. How many assistants are there, exactly? I mean assistant district attorneys. Have you a fair idea of the number?

Mr. WHITNEY. I should think about 22.

Mr. NELSON. And how many other employees are there within the jurisdiction of this district attorney's office?

Mr. WHITNEY. Well, you mean clerks and stenographers?

Mr. NELSON. Yes; his total office force, approximately.

Mr. WHITNEY. There must be more than twice as many more. I should think between 50 and 60 employees in that office, at least.

Mr. NELSON. Has he also charge of the inspectors of various kinds? For instance, he can call upon inspectors in the Post Office and the Internal Revenue Office?

Mr. WHITNEY. Yes; but he is not in charge of those men, except as they are working on particular cases. Those men are under their own chiefs. There is a post-office inspector in charge in New York, and there is a man at the head of the special agents in the Treasury Department, and a man at the head of the revenue agents in the Internal Revenue Department, and a man at the head of the Department of Justice agents, in the Department of Justice. Each one of them has a head. Of course, those men work—when they are working on a case pending in the district attorney's office I would hardly want to say that they work under orders. They work right along with the district attorney.

Mr. NELSON. My thought in making this inquiry is this: I was just wondering whether Congress might not find it advantageous to break up somewhat the responsibility of looking after so many assistant district attorneys. Do you know whether, in your practice in your day, the head of this force kept in constant contact and exercised careful supervision over these junior district attorneys?

Mr. WHITNEY. Absolutely.

Mr. NELSON. He did?

Mr. WHITNEY. He did, absolutely, in every detail. Mr. Wise, when he was United States attorney, often went into cases after the case had been part way concluded, and took the case up and went on with it.

Mr. NELSON. Have you any knowledge whether that close supervision has lessened any under Mr. Marshall's administration?

Mr. WHITNEY. Knowledge; no.

Mr. NELSON. Have you any information?

Mr. WHITNEY. I think I have.

Mr. NELSON. That is, they are given less or more freedom in conducting these cases?

Mr. WHITNEY. So far as the district attorney is concerned, I think more freedom.

Mr. CARLIN. Are you a partner of Mr. Henry A. Wise?

Mr. WHITNEY. No, sir; I am not a partner; I am associated with him. I am not in partnership with him.

Mr. CARLIN. You say you are associated with him?

Mr. WHITNEY. Well, I mean I receive a fixed salary from his firm, Bigelow & Wise, and also receive a percentage of the business I bring into the firm.

Mr. CARLIN. Does not that make you a partner?

Mr. WHITNEY. I do not so consider it. I am an employee.

Mr. CARLIN. You are in the office of Bigelow & Wise?

Mr. WHITNEY. Yes; I am an employee.

Mr. WALSH. Did you know or have any reliable information concerning the subpoenaing of a couple of women from the Austrian consulate at 2 o'clock one morning?

Mr. WHITNEY. I do not know that. I heard it.

Mr. NELSON. What are the sources of your information?

Mr. WHITNEY. I would rather not give it, Mr. Nelson, if you do not misunderstand me.

Mr. CARLIN. Is the information such as you would rely on?

Mr. WHITNEY. Yes, sir.

Mr. CARLIN. Then you can tell us about it.

Mr. WHITNEY. I heard that some ladies were subpoenaed from the Austrian consulate at 2 o'clock in the morning on forthwith subpoenas, as they are called, to appear before the grand jury forthwith, and they were taken to the officers of the Department of Justice and there were questioned.

Mr. NELSON. By whom?

Mr. WHITNEY. By employees or agents of that department.

Mr. NELSON. You do not know the names of the persons—the employees?

Mr. WHITNEY. No, sir.

Mr. NELSON. What is the source of your information as to that?

Mr. WHITNEY. It is a reliable source which I would rely on, but I respectfully ask that I be not asked to give it.

Mr. WALSH. My information is that one Abel Smith, formerly assistant United States district attorney for the southern district of New York, testified to that effect in some court.

Mr. WHITNEY. I think Mr. Smith is associated with Mr. Stanchfield, who was the attorney for the Austrian consulate, I think. I have heard that. I never knew of Mr. Smith testifying about it.

Mr. WALSH. Mr. Smith has offices at 120 Broadway?

Mr. WHITNEY. Yes, sir.

Mr. CARLIN. You are excused, Mr. Whitney.

Mr. WHITNEY. Thank you, very much.

TESTIMONY OF HUGH McQUILLAN.

(The witness was duly sworn by Mr. Carlin.)

Mr. CARLIN. Please give your name and address and occupation.

Mr. McQUILLAN. Post-office inspector, attached to the New York division. Do you want my home address?

Mr. CARLIN. That is sufficient. How long have you been so employed?

Mr. McQUILLAN. Ten years as an inspector.

Mr. CARLIN. When did you receive a subpoena in this case?

Mr. McQUILLAN. Day before yesterday.

Mr. CARLIN. With whom have you talked about the subpoena since you received it?

Mr. McQUILLAN. Mr. Schaeffer, who was subpoenaed with me, the inspector in charge, under whom I am employed—

Mr. CARLIN. Who is that?

Mr. McQUILLAN. Mr. Cochran; the chief clerk of the chief inspector here at Washington, Mr. Johnston, Mr. Sutherland, in the department here—I do not know what his title is.

Mr. CARLIN. Anybody else?

Mr. McQUILLAN. One or two inspectors in the office; in our own office.

Mr. CARLIN. Did you receive any instructions from anybody as to what you should testify to here or refuse to testify?

Mr. McQUILLAN. Mr. Schaeffer—I went to Mr. Cochran personally alone. Mr. Schaeffer was not present. I asked whether or not I should make the usual statement when subpoenaed in cases that our information is confidential and should not be disclosed, and whether I should then abide by the decision of the court. Mr. Schaeffer and I went to the chief's office this morning and found the chief left for New York last night.

Mr. CARLIN. You have no instructions, then, in the matter?

Mr. McQUILLAN. Not specifically; not any more than the general instructions.

Mr. CARLIN. Were you detailed by the department in the investigation being made by the district attorney for the southern district of New York, I believe, of certain charges against the New York Tribune?

Mr. McQUILLAN. Against the promotion department of the New York Tribune; yes, sir.

Mr. CARLIN. Tell us about that investigation.

Mr. McQUILLAN. I would like to preface my remarks, Mr. Chairman, there, by stating that our investigations and reports to the department are confidential. Now, if you will direct me to answer the question, I will do so.

Mr. CARLIN. Tell us what you did in that case.

Mr. McQUILLAN. Inspector Schaeffer commenced the investigation at the request of the United States district attorney of New York, and a few days after the investigation was started I was called in to assist Mr. Schaeffer. Together we investigated the promotion department of the Tribune, which was a scheme of giving away lots with subscriptions to the Tribune, and we submitted the results of our investigation to the district attorney.

Mr. CARLIN. It has been testified to here that you had some connection in that matter with Mr. Watson, of the New York Journal.

Mr. McQUILLAN. Yes, sir.

Mr. CARLIN. Tell us what your relations with him were in this matter.

Mr. McQUILLAN. I learned that Mr. Watson was the original complainant in the case—the New York Journal or American, rather, the morning edition, I believe—had been investigating the project for some time—I think for a month or more—before the matter was submitted by Mr. Watson to the United States district attorney, and after Mr. Schaeffer and I were assigned on the case we made use of considerable data furnished us by Mr. Watson—verified a great many statements which he had made to the district attorney.

Mr. CARLIN. Did you view the property with Mr. Watson?

Mr. McQUILLAN. Yes, sir; we did.

Mr. CARLIN. Did you find parks and avenues and trees, which were a part of the advertisement, laid out on the grounds?

Mr. McQUILLAN. We found many that were laid out and many that were not; that is, when I say they were not laid out, the trees, in some instances, were cut down, but nothing else.

Mr. CARLIN. How long has it been since you made the report?

Mr. McQUILLAN. The report was submitted the latter part of July last.

Mr. CARLIN. Did your associate, Mr. Schaeffer, also sign that report?

Mr. McQUILLAN. Yes, sir; we made a written report to Mr. Marshall and a supplementary report to the department.

Mr. CARLIN. The Post Office Department?

Mr. McQUILLAN. Yes, sir.

Mr. CARLIN. There has been no indictment found in this case?

Mr. McQUILLAN. It was not presented to the grand jury.

Mr. CARLIN. It was not?

Mr. McQUILLAN. No, sir.

Mr. CARLIN. Are you sure of that?

Mr. McQUILLAN. Well, I was on the case every day, while the case was under investigation, and I saw no signs of it, and no subpoenas sent out; I was not before the grand jury.

Mr. NELSON. No subpoenas were sent out to any person?

Mr. McQUILLAN. As far as I know.

Mr. NELSON. Was the grand jury in session?

Mr. McQUILLAN. I believe it was.

Mr. NELSON. Were there any suggestions that you heard of any time of anybody being brought before the grand jury to testify?

Mr. McQUILLAN. Mr. Watson suggested it.

Mr. NELSON. To whom?

Mr. McQUILLAN. To me and Schaeffer.

Mr. NELSON. Did he, in your presence, suggest that to District Attorney Marshall?

Mr. McQUILLAN. I was not present at the interview between Mr. Watson and Mr. Marshall. I think perhaps he did to Mr. Marshall's assistant, who had direct charge of the case, Mr. Stevenson.

Mr. CARLIN. Did you suggest to Mr. Watson that there was an unusual delay in the matter and that he had better try publicity in order to get an indictment?

Mr. McQUILLAN. No; I do not think so. I am quite positive I did not.

Mr. CARLIN. Did you say anything to him about publicity at all?

Mr. McQUILLAN. Not that I recall.

Mr. NELSON. Did you say it was a good thing to let loose some publicity?

Mr. McQUILLAN. No, sir.

Mr. CARLIN. Did you reach the conclusion that the scheme was in violation of law or not?

Mr. McQUILLAN. Yes, sir.

Mr. CARLIN. You reached the conclusion that the scheme was in violation of law?

Mr. McQUILLAN. Yes, sir.

Mr. CARLIN. Did you recommend an indictment?

Mr. McQUILLAN. We did not make any recommendations to the district attorney.

Mr. CARLIN. You made recommendations to the department—

Mr. McQUILLAN. We made a report to the district attorney and one to the department—

Mr. CARLIN. Duplicate recommendations?

Mr. McQUILLAN. No, sir; merely submitting the facts to him without any recommendation. We are guided by the district attorney's decision in the matter.

Mr. CARLIN. Which one of the assistants did you come directly in contact with?

Mr. McQUILLAN. Mr. Stevenson.

Mr. CARLIN. Did you talk with him about the case?

Mr. McQUILLAN. Many times.

Mr. CARLIN. You told him you reached the conclusion there was a violation of law?

Mr. McQUILLAN. Yes, sir.

Mr. CARLIN. Did he reach the same conclusion?

Mr. McQUILLAN. That I could not say. Mr. Stevenson is a cautious man in his remarks.

Mr. CARLIN. Was he cautious about talking with you in this matter?

Mr. McQUILLAN. His usual manner.

Mr. CARLIN. He did not express any opinion to you as to whether he thought they were violating the law or not?

Mr. McQUILLAN. Not directly.

Mr. CARLIN. Did he do it indirectly?

Mr. McQUILLAN. I am of the opinion that he thought it was a violation.

Mr. CARLIN. Well, what is your idea as to why you have not been called before the grand jury?

Mr. McQUILLAN. Mr. Marshall did not think it was such a case as we could get successful prosecution.

Mr. CARLIN. How do you know that?

Mr. McQUILLAN. He so told me.

Mr. CARLIN. Then, you have talked with Mr. Marshall about the case since you sent in your report?

Mr. McQUILLAN. Following our report to him; yes, sir. I had one conversation with Mr. Marshall, and that was following the report.

Mr. CARLIN. Tell us what occurred in that conversation—what was said?

Mr. McQUILLAN. Well, that is almost a year ago. I do not remember just what the conversation was in detail, but Mr. Schaeffer, Mr. Marshall, and Mr. Stevenson and I were together in Mr. Marshall's office and went over the whole situation, and Mr. Marshall gave it as his opinion that a successful prosecution could not be had at that time because, for one reason, it was possible for the promoters to go ahead and do a great deal more work on the property than had been done at that time. They had not stopped working on it. They might go ahead and spend a hundred thousand dollars or more on the property, and thus avoid the charge of fraud.

Mr. CARLIN. What was the conclusion that you reached—

Mr. McQUILLAN. Mr. Marshall's conclusion was that there would be no prosecution, and we could go no further. We reported the case to the department.

Mr. CARLIN. Have you any knowledge of the matter since your report?

Mr. McQUILLAN. The only information I have is I received several circular letters the company sent out a week ago, from persons who had received them, showing the promoters are still advertising the property.

Mr. CARLIN. Have they spent the several hundred thousand dollars you mentioned?

Mr. McQUILLAN. I do not know what they have done on the property; I have not been on the property since last June.

Mr. CARLIN. Have you changed your opinion about the guilt or innocence of the parties?

Mr. McQUILLAN. No, sir; we sometimes, though, know a person is guilty, but it may be difficult to prove it.

Mr. CARLIN. Did you furnish in your report the evidence you gathered, the names of witnesses—

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. There were some advertisements which spoke of persons having bought lots and sold them at a profit. Did you investigate any of those names?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. Did you find they were bona fide or not?

Mr. McQUILLAN. We investigated one—the only one we heard of—and found it was not bona fide.

Mr. NELSON. Did you discover any yachts around the beach there, anchored in that neighborhood?

Mr. McQUILLAN. There was one motor boat there.

Mr. NELSON. What was the nature of the motor boat?

Mr. McQUILLAN. Oh, a motor boat perhaps 40 feet long.

Mr. NELSON. Just one?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. How long had it been there?

Mr. McQUILLAN. I was on the property twice or three times—I say, roughly, now—a month, and the boat was there each time I was there.

Mr. NELSON. To whom did it belong?

Mr. McQUILLAN. Mr. Mayo.

Mr. NELSON. Who was Mr. Mayo?

Mr. McQUILLAN. The promoter.

Mr. NELSON. They advertised they had a yacht club there?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. And this Toms River was to be improved for purposes of commerce. Was that advertised?

Mr. McQUILLAN. No, sir; they advertised they had a yacht club and a clubhouse and a small hotel, which they did have—it was a small boathouse; they called it a clubhouse.

Mr. NELSON. You looked over the outfit?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. Did it impress you as being bona fide or not?

Mr. McQUILLAN. Not bona fide.

Mr. NELSON. Just a hoax?

Mr. McQUILLAN. The part of the grounds they included was where the yacht club was, and the ground there was not for sale at the advertised price, but held out by the promoters at a price 20 or 30 times higher. The part sold to the public was at the rear of the property.

Mr. NELSON. How many lots on the beach proper had been sold, within your knowledge, or conveyed?

Mr. McQUILLAN. When you say the “beach front” that is indefinite. That was 1 mile long, along the beach, and ran back 2 or 3 miles into the wilderness. The tract which you referred to as the beach proper—the development part of the property——

Mr. NELSON. Yes.

Mr. McQUILLAN. In the early part of the investigation we found very few lots had been sold in there—to not more than four or five people.

Mr. NELSON. State in outline what facts you observed in your inspection of a month there, or thereabouts, that led you to conclude that this was not in accordance with the requirements of the law.

Mr. McQUILLAN. They advertised that the lots were being practically given away as a premium with the paper, to induce new subscriptions; that they were being sold at cost, and in another part of the booklet it said premiums are usually given away at a price away below cost, and that the Tribune was not making any money out of it, and the Tribune was spending thousands and thousands of dollars on this property for the purpose of giving their subscribers a high-class premium, and any person purchasing was entitled to and would receive the best available lot at that time. “First

come, first served." We found that practically all the property except within a half mile, at the most, of the beach, was wild scrub-oak land and sand of practically no value at all. The postmaster at Toms River said it was worth about \$6 an acre. It was being sold for \$19.60 per lot.

Mr. CARLIN. How much would that be per acre?

Mr. McQUILLAN. I think \$320—three hundred and some dollars.

The tracts between the Atlantic City Boulevard and the water they developed. They put a small hotel on there and restaurant, a clubhouse, some small bathing houses, and made a very attractive resort out of that part of it, but, as I before stated, those lots were not given to the ordinary person who subscribed to the paper. Some of the first subscribers received lots $2\frac{1}{2}$ miles away from the water—most of them did. I found that the promoter had done precisely the same thing in another development which he handled for a Chicago paper. At this development he sold some twenty-six or twenty-seven thousand lots.

Mr. CARLIN. On the Chicago development?

Mr. McQUILLAN. In the Jersey—the Tribune property. I think in Chicago it was higher—some 40,000.

Mr. CARLIN. They had sold 26,000 lots?

Mr. McQUILLAN. Yes, sir. They were sold on the installment plan and that amount of money had not been taken in. I think the installments ran over a six months' period.

Mr. CARLIN. The total cost of the whole property, with their improvements—was that estimated by you?

Mr. McQUILLAN. Yes, sir.

Mr. CARLIN. What was the estimate—do you recall?

Mr. McQUILLAN. I have not the exact figures, but somewhere in the neighborhood of \$125,000.

Mr. CARLIN. At the time you made the report they had sold \$500,000 worth of property?

Mr. McQUILLAN. Approximately.

Mr. CARLIN. How much of the property did they have left?

Mr. McQUILLAN. They had, I should say, nine-tenths of the water front and several thousand lots in the back. I have forgotten the exact figures.

Mr. CARLIN. You say several thousand?

Mr. McQUILLAN. There was some 30,000 lots all told.

Mr. CARLIN. I see.

Mr. McQUILLAN. They would run into big figures.

Mr. NELSON. What are the dimensions of the lots? I believe that is in the testimony, though. Do you remember?

Mr. McQUILLAN. I think 20 by 100.

Mr. CARLIN. If the other lots were to be sold—or had been sold, or should be sold at the same price as the previous lots had been sold—what do you estimate the total receipts from the property would be?

Mr. McQUILLAN. Something over half a million.

Mr. CARLIN. They had already taken in half a million?

Mr. McQUILLAN. They had already contracted for all of that.

Mr. CARLIN. They had about 10,000 lots left?

Mr. McQUILLAN. No, sir; not 10,000.

Mr. CARLIN. You say they had 30,000, and had sold 20,000?

Mr. McQUILLAN. No; 26,000.

Mr. CARLIN. That would leave 4,000 lots.

Mr. McQUILLAN. There was some swamp land in the property which they could not sell at all. There was something under 2,000 lots, I think, left.

Mr. CARLIN. Then, you actually found they had really made some profit?

Mr. McQUILLAN. Roughly, we found there was a profit of \$300,000.

Mr. CARLIN. And the representation was that they would actually be out of pocket by this deal?

Mr. McQUILLAN. Yes, sir.

Mr. CARLIN. And were using the mail in making that representation?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. Did you discover any literature going through the mails in the way of advertisements?

Mr. McQUILLAN. Yes, sir; we had lots of it.

Mr. NELSON. Your conclusion was that there was no question as to the use of the mails?

Mr. McQUILLAN. Absolutely not.

Mr. NELSON. What was the relation of this promoter, in a business way, with the Tribune?

Mr. McQUILLAN. He was an outside promoter. That is his business. He promoted such projects at several points in California, in Michigan, and at other points throughout the country; and, I understood he came to the Tribune and made this offer to them to increase their circulation to a larger extent without any cost whatever to them, he having permission to use their name in connection with his lot promotion scheme.

Mr. NELSON. Who gave the deeds?

Mr. McQUILLAN. The deeds were given by a trustee who was connected with the Tribune.

Mr. NELSON. So, as a matter of fact, you discovered that the Tribune was selling the lots and this man was acting as their agent?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. Did you recommend any action in reference to Mr. Mayo, the promoter?

Mr. McQUILLAN. Well, all the facts were submitted to the district attorney without recommendation.

Mr. NELSON. Without recommendation?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. You were engaged in this exactly how long—this investigation?

Mr. McQUILLAN. To be exact, I could not say.

Mr. NELSON. Approximately, then?

Mr. McQUILLAN. Two months.

Mr. NELSON. And went over every phase of it carefully?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. And conferred with your associate, Mr. Schaeffer?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. And you agreed upon your report?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. What was the nature of the improvements that you saw there in the way of streets, sewers, electric lights, etc.?

Mr. McQUILLAN. What we refer to as the water-front property. they cut down the trees and built streets through there by putting gravel over the top soil there. I do not think there was any curbing or guttering at all. The water-front property was developed in good shape for a summer resort.

Mr. NELSON. That would cover how many lots out of the 30,000?

Mr. McQUILLAN. Something over 2,000.

Mr. NELSON. What, in the way of improvements, did you see on the other property?

Mr. McQUILLAN. The other was improved merely by cutting down trees—the whole tract is covered with scrub oak—and they had cut this down and had some cheap signs put up, giving the name of the boulevards, etc., only one of which was passable.

Mr. NELSON. Did you ever see any of the buyers on the property trying to locate the lots they had purchased?

Mr. McQUILLAN. Yes.

Mr. NELSON. Did you interview them?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. Did they get the lots they bought or expected to buy?

Mr. McQUILLAN. They got the lots they bought.

Mr. NELSON. Did they inspect the lots beforehand or did they buy without seeing the lots?

Mr. McQUILLAN. They bought them from a map.

Mr. NELSON. And then they tried to ascertain where the lots were?

Mr. McQUILLAN. Yes, sir.

Mr. NELSON. Did you ascertain whether they were satisfied?

Mr. McQUILLAN. I think, with one exception, they were dissatisfied.

Mr. NELSON. There were not any sewers on the whole tract?

Mr. McQUILLAN. No, sir; there could not be any in that territory.

Mr. NELSON. Were there any provision for lights, etc.?

Mr. McQUILLAN. I guess there was an electric wire from Toms River, which runs through the main boulevard, and electric lights on the water-front property—some incandescent lamps there.

Mr. CARLIN. How recently have you talked with the assistant United States district attorney in charge of this matter?

Mr. McQUILLAN. Not within six months—not on this case.

Mr. CARLIN. Have you talked with him on other cases during that period?

Mr. McQUILLAN. I have met him frequently in the district attorney's office or in the building. I am there every week, at least.

Mr. CARLIN. You are excused, Mr. McQuillan.

TESTIMONY OF MR. OLIVER M. SCHAEFFER.

(The witness was duly sworn by Mr. Carlin.)

Mr. CARLIN. You have heard the testimony of your associate, Mr. McQuillan?

Mr. SCHAEFFER. Yes, sir.

Mr. CARLIN. Have you anything in addition to what he has said that you can give the committee?

Mr. SCHAEFFER. There is nothing that I can think of.

Mr. CARLIN. Has he made any misstatements on the things in his testimony, as far as you recall?

Mr. SCHAEFFER. I did not notice any.

Mr. CARLIN. You reached the same conclusion he did in this case?

Mr. SCHAEFFER. We agreed; yes, sir.

Mr. CARLIN. You were present when the conversation was had with Mr. Marshall?

Mr. SCHAEFFER. Yes, sir.

Mr. CARLIN. Do you recall just what the conversation was that occurred?

Mr. SCHAEFFER. I do not recall the details of it, except Mr. Marshall questioned whether there could be a successful prosecution, and he said he wanted to keep up the reputation of his office in making a bull's-eye each time, and did not want to enter into a prosecution that he had doubt about.

Mr. NELSON. The only doubt he expressed, as I understand it, was that they might possibly improve the property?

Mr. SCHAEFFER. Yes, sir.

Mr. NELSON. Had you any doubt about the case?

Mr. SCHAEFFER. At that time?

Mr. NELSON. Yes.

Mr. SCHAEFFER. No, sir.

Mr. NELSON. You have corroborated the testimony of your associate?

Mr. SCHAEFFER. Yes, sir.

Mr. NELSON. Have you anything to add to the testimony given by your associate?

Mr. SCHAEFFER. No, sir; I have not.

Mr. CARLIN. You reached the conclusion that the scheme was not a bona fide scheme and was being operated in violation of law?

Mr. SCHAEFFER. That was my conclusion; yes, sir.

Mr. CARLIN. How much experience had you had in such matters?

Mr. SCHAEFFER. I have been assigned to fraud work about a year and a half. I have been an inspector about 10 years, but I have been working exclusively on fraud work about a year and a half.

Mr. CARLIN. You consider yourself an expert in these matters?

Mr. SCHAEFFER. No, sir; I do not.

Mr. CARLIN. How long do you consider it would take to become an expert in these matters?

Mr. SCHAEFFER. I would not consider myself an expert. I regard myself as one of the junior inspectors on this work.

Mr. CARLIN. Mr. McQuillan has been on this work longer than you?

Mr. SCHAEFFER. Yes, sir.

Mr. CARLIN. Do you regard him as an expert on these matters?

Mr. SCHAEFFER. I regard him as one of the capable inspectors; yes, sir.

Mr. NELSON. You are a very modest man yourself.

(The witness was thereupon excused.)

Mr. CARLIN. The committee will stand in recess until 2 o'clock.

(Whereupon, at 1 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

AFTER RECESS.

The subcommittee reconvened, pursuant to the taking of recess, at 2 o'clock p. m.

Mr. CARLIN. Mr. Watson, we will hear from you now.

FURTHER TESTIMONY OF MR. VICTOR A. WATSON.

(The witness, having been previously duly sworn, further testified as follows:)

Mr. CARLIN. Mr. Watson, you have been already sworn?

Mr. WATSON. Yes, sir.

Mr. CARLIN. And have you any additional statement you wish to make to the committee?

Mr. WATSON. I have, sir. I want to begin by introducing into evidence copies of three newspapers. The first one is a copy of The Morning Telegraph, of New York City, of April 26, 1916. I introduce this merely because I come before you as a stranger, and some idea of how I am regarded in my own city may have some bearing on the case. The Telegraph says, in connection with this hearing: "Mr. Watson is a man of unquestioned integrity. He is known to his fellow newspaper men and all other persons with whom he has come in contact as one of the most diligent and accurate reporters journalism has ever produced."

Next is a copy of the New York American of April 25, 1916. On page 9 of this paper appears a report of the testimony I gave here before your committee at the last hearing. I introduce it merely to show that I am not attempting to make a newspaper fight in this matter, that the report is very mild and could have been made very much more effective.

Next is a copy of the New York Tribune of April 25, 1916. It is my understanding that lawyers like to try their cases in court and not in newspapers. As a newspaper man, I have frequently been told that. Mr. Henry A. Wise, who figured in my last testimony, gave a statement to various newspapers, including the Tribune, the day following my last testimony. He says:

We seem to have arrived at the remarkable situation where the legislative functions of the House of Representatives have been suspended, while that body, as a sort of extra-judicial tribunal, inquires into the complaints of sore-heads of two classes—that is, those who have been indicted and those who have failed in their efforts to have somebody else indicted in the southern district of New York.

I leave that up to the House of Representatives to take care of.

No more honorable man than H. Snowden Marshall ever occupied the position of United States attorney, and in the discharge of his duties as such he unquestionably has been actuated by high motives, while this can hardly be said of those who now seek to traduce him.

I point here to the fact that Mr. Wise is the same gentleman whom Mr. Marshall wanted to give an opportunity to collect a fee, and Mr. Wise is the first man in the ring to defend Mr. Marshall, whose position should have been as prosecutor in this case.

The charge that he was guilty of any neglect of duty in not prosecuting the New York Tribune is only one more baseless charge emanating from an unworthy source.

Mr. Wise means me. The last relations I had with Mr. Wise were when, as an assistant United States attorney under Henry L. Stimson, he came in in the latter part of a prosecution against another New York newspaper, and at that time he did not consider me unworthy. He considered me an able newspaper man, and said I had

done a wonderful piece of work. Since then I have been in his home several times and been entertained as a newspaper man, and he never told me that he thought I was unworthy.

The charge that he was guilty of any neglect of duty in not prosecuting the New York Tribune is only one more baseless charge emanating from an unworthy source. About one year ago, as a means to increase its circulation, the Tribune entered into an arrangement whereby, for a very small sum of money, it sold to every new subscriber a small building lot upon an attractive tract of land near Toms River, N. J., thus affording an opportunity for people of small means to own a summer home where they would have many advantages not to be obtained elsewhere at such moderate cost.

I challenge that statement and state to the committee that within a radius of 50 or 100 miles of New York there are any number of places where lots have been sold by promoting companies where the acreage has been bought for practically nothing, and because the low price looked very small people have thought they were getting bargains. As a matter of fact, within a radius of 10 miles of Beechwood, the tract under investigation, you will find a number of deserted properties of this sort, where the suckers gave up their good money from time to time.

Before inaugurating this scheme the attorneys for the Tribune went into the matter with great care and satisfied themselves that the scheme was entirely regular and proper, and that the purchasers of the lots would receive full value. Had there been anything improper in the scheme, the paper itself would naturally suffer the most from its failure.

If the attorneys for the Tribune did go into this scheme, I am going to show you, as long as you will listen to me, what the attorneys could have found. I am going to show you what I found without being an attorney.

The lots were sold honestly and fairly. Many thousands of dollars were expended in building docks, bathhouses, pavilions, tennis courts, roads, and other improvements upon the property, all of which were and are for the community interest of the lot owners.

I will interject the statement there that to what extent they are for the community interest of the lot owners, will appear as I present my testimony.

At the time when complaint was made to Mr. Marshall more money had actually been spent on such improvements than had been received from the sale of lots. The complaint was not made by anyone who had purchased a lot.

That is a lie; an absolute, flat lie, and I am going to present this afternoon some cases where complaints were made, after I am through reading this article of Mr. Wise.

MR. CARLIN. I call your attention to the testimony of two post-office inspectors this morning, who stated that they visited the purchasers and found all except one dissatisfied. Have you read that testimony?

MR. WATSON. I know something about it. As I explained before, the post-office inspectors were very close-mouthed, and while they took everything I gave them, they seldom, if ever, gave me a fact that they got themselves, and I thought that was the best way for the investigation to proceed. In fact, when I suggested that you subpoena them here, I had not the slightest idea whether they would verify my statements or whether they would not.

Mr. NELSON. Have you recently conferred with these inspectors?

Mr. WATSON. I have not. Continuing, the article says:

The complaint was not made by anyone who had purchased a lot. It came from another newspaper, and one which was bitterly antagonistic to the Tribune. Mr. Marshall personally went into the facts very thoroughly, and after so doing decided that the scheme was an entirely legitimate one.

That is the end of the statement.

Mr. CARLIN. Did you not tell the committee, in your former statement, that Mr. Marshall had said to you that he thought the scheme was not legitimate, but that it would be better to wait or have delay in the matter?

Mr. WATSON. I was just about to make that point, Mr. Chairman, and I want to make it, if you will let me, in my own way, by trying to answer Mr. Wise. That is, that if he makes this statement with the idea of conveying that Mr. Marshall ever said to me that this was a legitimate scheme, Mr. Wise lies.

Mr. Marshall, on the contrary, never gave me the slightest indication that he thought it was a legitimate scheme. Mr. Marshall said it was not a legitimate scheme. He said it was undoubtedly crooked, and all he asked for was time to make the case stronger, and while he was asking me for time to make the case stronger, he was writing to Mr. Wise that there was not going to be any prosecution.

Mr. CARLIN. Your idea is that he was either misleading you or misleading Mr. Wise?

Mr. WATSON. Yes. I am quite convinced now that he was misleading me.

Mr. NELSON. Mr. Wise does not speak as if he had been misled, does he?

Mr. WATSON. Not very much. Mr. Wise apparently does not do what all the lawyers have told me they do—try his case in court. He is trying this case out of court. If I wanted to make a newspaper fight out of it, I would make my fight in a very big newspaper, but I am not going to do that; I am going to do what the lawyers are supposed to do; I am going to make my fight in court, before you gentlemen.

Mr. Wise says there was no complaint about this matter. I am going now to deal with the case of Miss Nellie J. Griffin, of 2001 Morris Avenue, New York City. At a later time you will find how Miss Griffin came under our observation. One of my investigators met her at Beechwood, where he found her to be thoroughly dissatisfied.

Mr. CARLIN. Were these complaints that you refer to now made to Mr. Marshall direct, or made to your investigator?

Mr. WATSON. Made to us, and turned over to the Post Office Department, and presented, I know, to Mr. Wise's office.

Mr. NELSON. That is, turned over to these inspectors?

Mr. WATSON. Yes; turned over to these inspectors.

Mr. NELSON. And they testified they had made a report, submitting the evidence to Mr. Marshall?

Mr. WATSON. Yes..

Mr. CARLIN. Do you mean the Government inspectors?

Mr. WATSON. United States post-office inspectors, who were assigned at the request of the United States district attorney's office, to conduct the official investigation into this case.

In order to make this testimony clear, I must expose at this time the fact that I placed men to work in the New York Tribune office, and I had one or two investigators on the inside of the Tribune office, and if you gentlemen are going to hear all of my testimony, I am going to give you about 48 or 50 daily reports of what took place inside of the Tribune office, showing all of the various transactions up to the time the Tribune learned that it was under investigation, and it rushed out to retain Mr. Henry Wise as its counsel to deal with United States Attorney Marshall, to prevent the indictment. This Griffin matter transpired at the time the Tribune knew it was under investigation. I have a report from one of my investigators dated May 26, 1915, giving the result of a call made at the Tribune office, following Miss Griffin's determination to try to get her money back. She was accompanied by a man named J. Miller, a friend of hers.

Mr. CARLIN. This was Miss Griffin?

Mr. WATSON. Miss Nellie J. Griffin. She said:

I went to the Tribune office on Wednesday, May 26, 1915; called on Mr. F. D. Keeler in room 817.

My first remark was, "Mr. Keeler, I'd like to have my money back as I have lost my faith in the proposition"; he answered, "Why?" I said that I had recently read a paragraph in an article in the Tribune which said that they did not guarantee any real estate advertisements; I then said: "Does this mean Beechwood, too?" He said: "Yes;" and reiterated it a number of times during our conversation. Then Mr. Keeler asked me who wrote that letter (referring to the letter I had written them.) I said that I did; he then said, "Who dictated it?" I said nobody had.

Mr. Keeler then said "That the Tribune did not guarantee any stock, bond, or real estate advertisements, and therefore did not guarantee Beachwood." There was some discussion about the quality of stocks and bonds, in which he tried to show me that the paper was right; and said that he himself had recently just put \$2,500 in Bethlehem steel (this is probably some of our money), inferring that he did not expect a guaranty from anybody.

He then wanted to know where I got the impression that they were going to grade and curb the streets; I said that your literature dwelt at length on developments and improvements, and what was the idea of my paying \$20 a lot unless they were going to do something to improve the place; and why they were calling them streets if they were not going to make streets out of them; that my idea of a street was a roadway that could be used for walking as well as for driving; and that I could buy all the land that I wanted unimproved for \$1 an acre. He then got out some circulars and literature, saying, "This is all of our advertising matter," and asked me to show him where they said they would do any grading or curbing or where they promised any improvements.

Referring again to my letter, he said that "he could not too firmly impress on me the fact that it did not concern me or anyone else what they had got the property for or what they sold it for."

He then asked me who the friend was that had informed me about Beachwood; after some discussion on this subject, he said very emphatically (striking his desk with his fist to emphasize it) that the person that told me was a fool and did not know what they were talking about; I brought the subject again back to the point of wanting my money back; he said, "He would not give me my money back until I had seen the property and was then dissatisfied; that to give me my money back on some one else's say so was to admit that Beachwood was no good." I then suggested that if the lots were all that he said that they were that he could sell them again, but he evaded this.

I then suggested that I would go to Beachwood Thursday, as I understood that there was to be an excursion; he corrected me, saying, "That there was not going to be any excursion, but just an informal opening." He then also

said that Thursday would not be as good a day as Saturday, and I made an appointment to go down on Saturday on the 10 a. m. train, when he said he would show me my lots.

Just for the purpose of getting some of these things disposed of, I will put them in, regardless of their order. This is a letter from the promotion department of the Tribune, of June 11, 1915, to Miss Nellie J. Griffin, saying:

DEAR MADAM: Referring to our recent correspondence, we inclose herewith two releases, which we will ask you to kindly sign and return to the office of the general manager of the New York Tribune within five days of the date of this letter, together with all contracts, receipts, etc., that you have in your possession from this department in reference to Beechwood lots.

As soon as these papers are sent in to the general manager's office he will gladly refund to you the amount which you have paid in on your lots.

Yours, very truly,

G. G. MAYO,

Promotion Department, the New York Tribune.

Another letter from the same department of the Tribune to Miss Griffin, dated May 11, 1915:

DEAR MADAM: In answer to your letter of May 6 beg to say that we entered into a contract with you for lots at Beechwood, together with a subscription to the daily and Sunday New York Tribune, in the best of faith. We naturally expect you to carry out your part of the contract in the same spirit.

The development of Beechwood is being rapidly completed and everything will be in readiness at the opening day, May 30, 1915. You have probably read the Tribune's literature and are conversant with the generous promises made therein. The Tribune believes that these promises will not only be fulfilled in fact but rather exceeded.

We would very much like to know for what reason you desire to withdraw from your contract. We would suggest that you visit Beechwood and learn for yourself at first hand what the Tribune is doing there rather than to rely on the word of so-called friends who have advised you to withdraw from the proposition.

Our contract is as simple, definite, and concise as we know how to make it. It provides that "if there is any default in payment for subscription or lots it is agreed that all moneys paid are to be retained as liquidated damages and not as a penalty."

When you have visited Beechwood in its completed state, if you can show us where the New York Tribune has failed in any respect to live up to its written promises regarding the property we will cheerfully refund the money which you have paid.

Yours, very truly,

G. G. MAYO.

Promotion Department the New York Tribune.

She must have convinced them, because they did refund the money.

I offer in evidence a check of the New York Tribune, No. 7515, on the National Park Bank, of New York, for the sum of \$11.20, dated June 14, 1915, payable to Miss Ellen J. Griffin:

EXHIBIT No. 42.—APRIL 29, 1916.

Voucher No. 2066 B. No. 7515.

NEW YORK TRIBUNE,
THE TRIBUNE ASSOCIATION,
New York, June 14, 1915.

Pay to the order of Miss Ellen J. Griffin eleven 20/100 dollars (\$11.20).

G. V. ROGERS, *Treasurer.*
WM. BARKER, *Cashier.*

TO THE NATIONAL PARK BANK, OF NEW YORK.

Mr. CARLIN. Is that Miss or Mrs.?

Mr. WATSON. It says on the check "Miss."

Mr. CARLIN. I thought I understood you to say that the letters were addressed to "Mrs." Griffin. I wondered if that referred to the same party.

Mr. WATSON. I am quite sure it is the same, because we got the photograph of the checks from the same lady about whom I have been testifying.

I offer in evidence a second check of the New York Tribune on the National Park Bank, No. 7514, dated June 14, 1915, in the sum of \$22.40, payable to Miss Nellie J. Griffin.

EXHIBIT No. 43—APRIL 29, 1916.

Voucher No. 2066A. No. 7514.

NEW YORK TRIBUNE,
THE TRIBUNE ASSOCIATION.
New York, June 14, 1915.

Pay to the order of Miss Nellie J. Griffin twenty-two 40/100 dollars (\$22.40).

G. V. ROGERS,
Treasurer.
WM. BARKER,
Cashier.

TO THE NATIONAL BANK OF NEW YORK.

That is where they were refunding her money.

On June 4, 1915, Ellen Griffin wrote to the New York Tribune, giving her reasons why she wanted her money back. This was after she had visited the property. She says:

PROMOTION DEPARTMENT, NEW YORK TRIBUNE,
154 Nassau Street, City.

GENTLEMEN: Your letter of June 2nd stating that my payments for lots at Beechwood is long over due, and if there was any good reason why I desire you to allow no more time you will gladly extend the time of payment, and that if you do not hear from me on or before June 12th, 1915, you will cancel my lots is received. You have evidently overlooked my letter of about two weeks ago, in which I said I would like to withdraw from this proposition and have the money that I have already paid in returned to me. Also my visit to your Mr. Keeler, on which occasion I gave him my reasons for wishing to withdraw from this contract. I told your agent at the time that I made my first payment, and I also told your Mr. Keeler, that I would not have invested in Beechwood at all if I did not think that the Tribune guaranteed Beechwood. Since paying you my money I read a paragraph in the Tribune saying that they did not guarantee any real estate advertisements, that people were to use their own judgment. Your Mr. Keeler confirmed this statement, saying that it included all real estate advertisements, and meant Beechwood, too. Therefore, I told Mr. Keeler that settled the matter as far as I was concerned, that I knew nothing about real estate, and had depended solely on the Tribune in this matter, and I wish to have the money that I have already paid in returned to me—

That, Mr. Chairman, is a point I want to dwell on for a moment. I think you will find, on investigation, that pretty nearly everybody who bought these lots, bought them on the strength of assuming that the New York Tribune was a respectable newspaper, and that when it offered real estate for sale, that had cost practically nothing for acreage, it was imposing on people who believed in the old Horace Greely reputation of the Tribune—

I went down to Beechwood last Sunday. No one connected with the Tribune even offered to show me where the lots were, so I had to try to find them myself. I finally reached them by trespassing on the railroad property, climbing

down one side of their ditch, crossing their tracks, and climbing up the other side of the ditch. I saw no way of reaching the property without trespassing the railroad property. In the first place, I did not want lots so near the railroad, and I do not want them now. In the second place, and the principal reason that I do not want them is that the N. Y. Tribune does not guarantee Beechwood. The only guarantee of my investment is the sincere, honest, and trustworthy men who are managing it, and if the N. Y. Tribune can not guarantee that part of it, that fact alone must make the most careless of us thoughtful. I know that the sooner that you return my money to me, the more comfortable I shall feel.

I spoke with a number of lot owners at Beechwood, and they said that they had invested in Beechwood because they had faith in the Tribune.

I try never to trade with anyone that does not guarantee what they sell, and I certainly would not buy land, something I know nothing about, unless I had perfect confidence in the seller—the N. Y. Tribune.

Kindly let me know when you will return me my money and greatly oblige.

Yours, very truly,

(Signed) ELLEN GRIFFIN.

The releases themselves I will not attempt to read. I will just hand them to the stenographer to include in the record.

(The releases above mentioned appear in full below, as follows:)

JUNE 9, 1915.

For value received I hereby relinquish all right, title, and interest in and to lot five (5), in block A49, plat AE, at Beechwood, Ocean County, New Jersey, and release the Tribune Association, its agents, servants, and employees from all liability and responsibility or claim thereof in respect to contract No. 15005 with the promotion department of the New York Tribune, referring to the lots described above.

In the presence of:

JUNE 9, 1915.

For value received I hereby relinquish all right, title, and interest in and to lots 1-2-3-4, in block A49, plat AE, at Beechwood, Ocean County, N. J.; and release the Tribune Association, its agents, servants, and employees, from all liability and responsibility, or claim thereof, in respect to contract No. 7815, with the promotion department of the New York Tribune, referring to the lots described above.

In the presence of:

On June 2, 1915, one of my investigators gave me a report of a further talk with this lady, Miss Griffin. He said:

Miss Griffin told me that coming up on the train those that had been down to the opening [meaning the real estate opening of the property] were all joking and all realized that they had been stung. One lady remarked that there was one born every minute, but another lady corrected her to say that there were two born every minute. She also said there was a Brooklyn cripple who had been stung in the same way. She also said that the conductor of the train was also interested in the joking.

On June 17, 1915, one of my investigators, who was employed in the Tribune office, reported as follows.

Mr. CARLIN. What was his employment in the office, Mr. Watson?

Mr. WATSON. He was swindling the public, along with the rest of the Tribune's employees.

Mr. CARLIN. This person whom you had put in there?

Mr. WATSON. Yes, sir; and I informed the United States attorney of what gentleman in Mr. Marshall's business call a "plant"; I put him in there to see what the Tribune was doing, to follow instructions, do what he was told, and make daily reports about it.

Mr. CARLIN. How could you put him in the Tribune office?

Mr. WATSON. Anybody could go into the New York Tribune and get a job selling these lots, so long as they could sell them. They had no difficulty about references, or anything of that sort; anybody that went to the Tribune office and said, "I want to sell some of these lots for you and bring in some money" could get a job; could get all the literature, and be told what to do, and he would start out, and if he sold lots and brought in the money, they were extremely friendly with him.

Mr. CARLIN. And if he did not sell any lots, then what happened?

Mr. WATSON. You will learn when I get around to another investigator, who was afraid he would go to jail if he really went through with the sale.

Mr. CARLIN. Did I understand you to say you put 49 people in the employ of the Tribune?

Mr. WATSON. No; I only put two or three; but I have 49 daily reports.

Mr. NELSON. Investigators?

Mr. WATSON. Their reports to me of what was done each day. This investigator, reporting on this date, says:

JUNE 17TH, 1915.

Mr. WATSON: As is shown in the attached report, dated June 13th, in re Miss Ellen Griffin, the Tribune, you will see that they have, I believe, become frightened, and will make some refunds where they make up their minds that any of the "suckers" are in real earnest about getting their money back. Miss Griffin got the letter, of which the attached is a copy, in reply to her letter to them with the copies of the releases, all of which is attached. She called at the Tribune, as instructed in their communication, on Monday last, at the office of the manager of the Tribune Association, and they gave her back her money, which was paid by check.

This undoubtedly shows the weakness of the proposition, and bears out what I learned at the office during the last couple weeks; they have learned that the investigation is on, as well as who is pushing it and who is conducting it, and are without a question frightened about what the result is bound to be, and have made this refund for the sole purpose of trying to create the impression that they will make good to dissatisfied lot purchasers.

Mr. CARLIN. I would like to ask you a question there in reference to a statement by Mr. Wise; whether you started this investigation upon your own motion, or whether you started it by reason of complaints that were made to you by these malcontents?

Mr. WATSON. I think my first testimony was to the effect that people who had purchased lots, and subsequently saw what had been sold to them, made complaints to us—meaning wrote letters of complaint to the New York American office.

Mr. CARLIN. That was my recollection, but in view of Mr. Wise's statement, practically to the effect that that was not true, I wanted to know whether I was correct in my memory?

Mr. WATSON. Then, whatever Mr. Wise says to the contrary is absolutely a lie.

Mr. CARLIN. Does Mr. Wise enjoy the reputation of being a man of veracity?

Mr. WATSON. Sir?

Mr. CARLIN. Does not Mr. Wise enjoy the reputation of being a truthful man?

Mr. WATSON. He always did with me, until he made that statement.

Now, we have a different kind of complaint, which shows what happens when the New York Tribune thinks its skirts are clear—when they think that Mr. Wise has prevented an indictment.

I now read you a letter written by S. H. Lind, of 543 East One hundred and eight-first Street, New York City. I do not know who the man is. He was sent to me by the postal inspectors, who, in sending him, expressed the belief that I had better be careful, because he might be sent from the Tribune office to find out what we were trying to do. He first went to them. His first letter is dated September 30, 1915, addressed to the business manager of the New York Tribune, as follows:

In January of this year I bought four lots from your paper at Beechwood, N. J. I made 6 payments, or \$33.00, when I lost my position. I did not make my payments for some time, but this week I offered to pay 2 months off and was informed that the money could not be accepted as my contract was canceled and my lots had been sold to some one else. Can you do anything for me to get my money back? Can I get the lots back by making full payment? Thanking you for a reply, I am,

Very truly,

S. H. LIND,

543 East 181 Street, New York City.

That letter was really written at my suggestion, to find out what the attitude of the Tribune would be in the case of a man defaulting in his payments. As a matter of fact, the man had made up his mind that he was swindled, and all he wanted was his money. He got no answer to that.

Mr. CARLIN. To whom is that letter addressed?

Mr. WATSON. That letter is addressed to the business manager of the New York Tribune.

In view of the warning the post-office inspectors had given me about this man I thought it well to get him on record, so I asked him to write me a letter stating his case, and he says:

NEW YORK, August 2nd, 1915.

Mr. V. WATSON,
New York American.

DEAR SIR: Some time in January I bought four lots in Beechwood, N. J. of the N. Y. Tribune, through a man named Heaney. After making five payments on the lots which were sold at \$19.60 apiece, I met a man named Ackerman through a fellow lot owner. Mr. Ackerman informed me that the whole Beechwood land proposition was a swindle and advised me to see P. O. Inspectors McQuillan and Schaeffer who were investigating it. I went to the post office and saw Mr. McQuillan, who advised me to go down to the property and see the lots myself and then to make a report to him. I went down to the property and saw my lots. I found them situated about 2 or 2½ miles from the beach. I was very much dissatisfied with my property, as I did not believe that my lots were anywhere near so far back on the property. I informed the man at the station that I was far from satisfied, and he referred me to the office of the New York Tribune. I made a report to Mr. McQuillan and he informed me that you were interested in the investigation of this land affair and would be glad to hear my story. There are many details of this matter which I can not recall at present excepting one in particular wherein I was the means of interesting a crippled friend of mine into buying these lots and whose property is as far back as mine. I would be pleased to go over the matter again with you or your representative, at which time I will probably have recalled other things which I can not remember just now.

Very truly,

S. H. LIND.

He was one of the gentlemen whom I constantly asked the United States attorney's office to take before the grand jury.

Mr. CARLIN. You started to tell us something about what an employee of the Tribune said, and then you disconnected your story and went on with something else. You made some mention of his having to stop, because he was afraid he would go to jail.

Mr. WATSON. That was one of my investigators who lost his nerve. He was a little bit afraid to go ahead. I will come to that later. This man Lind, then, on October 8, 1915, wrote the following letter:

Mr. OGDEN REID,

New York Tribune, New York City.

DEAR SIR: On September 30th I wrote a letter to the business manager of your paper telling him about my case which is substantially the following: I bought 4 Beechwood lots and made 6 payments. I was then out of work for a while and could not make my regular payments. I got started working and went down to pay two installments and was informed that I could not even have the lots if I paid all of the balance, as the lots were sold to some one else. I asked him [business manager] if there was anything he could do to help me and offered to pay the full amount. I received no reply from him. Now, I know you are a busy man, Mr. Reid, but in a case like mine I thought it best to write to the boss himself. May I expect to get some advice from you or some assistance in the matter of getting my lots or my money back? Thanking you for a reply, I am,

Very truly,

S. H. LIND,

543 East 181 Street, City.

Mr. CARLIN. What is Mr. Reid's connection with the Tribune?

Mr. WATSON. Mr. Reid is the owner of the New York Tribune.

Mr. Lind tells me Mr. Reid never replied to him.

On November 13, 1915, Mr. Lind writes me as follows:

Mr. V. WATSON.

DEAR SIR: You promised to return my copies of letters sent to New York Tribune, but as yet I have not received them. I do not care to wait five months for the return of these copies, as I did for some action on the part of the people who were supposed to investigate my matter. Thanking you for an immediate reply, I am,

Very truly,

S. H. LIND,

*543 East One hundred and eighty-first Street,
New York City.*

He means the United States authorities, who were supposed to be investigating. Those two things, perhaps, answer Mr. Wise's statements about complaints. The post-office inspectors can tell you what a great many other people have to say about the lots they bought. I am presenting, to make the layout of this place clearer to you, an enlarged map of the property, and in presenting it I want to point out that the intersecting railroads, the Pennsylvania and the Central of New Jersey, which are a short distance to the south of the Atlantic City Boulevard, practically form a Chinese wall to keep the lot owners south of the railroad tracks away from the beach, unless they are willing to take their lives in their own hands. There is only one spot on the property where the thousands and thousands of lot owners can cross the railroad tracks without violating the laws of the State of New Jersey. For instance, if you live in block M18, which is on the easterly side of the property, just south of the railroad tracks, and you want to go in swimming, and you should cross the two railroads and be injured by a passing train, it would be at your own peril. If you crossed safely you would have to follow the

line of the Central of New Jersey Railroad until you got west of the point of intersection, about a mile away, before you would have any legal right to cross the railroad tracks.

Mr. NELSON. How many crossings are there from this side to that [indicating]?

Mr. WATSON. One.

Mr. NELSON. Just one?

Mr. WATSON. There is one crossing between the water front and the main part of the property. In fact, to make it clearer, I want to say that, with one or two exceptions, which I stated the other day, there was not the conveyance of a single lot north of the point of intersection of the two railroads. That is the gold-brick end of the property they show you but do not sell you. The part they sell you is south of the railroads and in between the railroads. These railroads are at grade. At some places they are on slight embankments. There are no fences to keep your children away from them, in case you happen to build a summer home or a winter home at Beechwood, because you will find at some places where the Tribune says it is great for a winter resort and other places where it says it is great for a summer resort. I want to make it clear that I am not presenting one paper or one map that has not already been officially presented to the United States Government through Mr. Marshall or his representatives.

Mr. Wise speaks of there being no complaints and gives the impression that everybody is thoroughly satisfied.

On Sunday, May 30, the day of the great advertised opening of this property, in 1915, a young man representing me took the train, and he writes the following report. I do not know that it is necessary to inflict this on you gentlemen.

Mr. CARLIN. Just put that in the record.

Mr. WATSON. I will just hand it to the stenographer. It tells about the dissatisfied people he found and all that sort of thing.

Mr. CARLIN. Is his name attached to the report?

Mr. WATSON. Yes. This is written by Tom Thorp, a gentleman rather famous as a university football player, and employed as a reporter on one of our newspapers.

(The report referred to above appears in full below, as follows:)

Sunday, May 13, was a dismal day; at least it proved to be that and considerable more to all those who made their initial trip to Beechwood, N. J. to view the much-heralded real estate holdings that they had acquired in the form of a subscription offering by the payment of a yearly subscription to the New York Tribune plus a substantial bonus.

"So this is the garden spot of America's most beautiful summer resort," declared Mrs. Daniel Mason, of No. 2498 Valentine Avenue, Bronx County, N. Y., as she and her daughter alighted from the 11.15 train of the Central Railroad of New Jersey at the newly erected and very much painted station at Beechwood, N. J.

"If this is the garden spot, may the good Lord save me from being brought in contact with the other spots," continued the very much disappointed Mrs. Mason. "The man who swindled me out of my hard-earned money should be sentenced to solitary confinement in Sing Sing Prison for the remainder of his natural life. Five-Hundred-and-Twenty-Per-Cent Miller was an apprentice compared to him.

"He informed me that Beechwood was fully developed. I wonder if he could have meant the trees and underbrush when he said 'fully developed.' By the looks of things he must have, or else he meant that all who purchased property were fully developed 'boobs.' It is about the same thing. Why, I can see

only one street, and it is only because they have a little gravel sprinkled on the ground that they call that a street. Let me look and see what that sign reads. 'Beechwood Boulevard.' Well, for the love of Christian souls, they have the nerve to call it a boulevard. Look; it only runs from the station south. How do they expect persons to cross the tracks to reach the property on the north side of the 'garden spot'? I suppose they will have aeroplanes or some other conveyance to take you there.

"They informed me that there were a 'number of beautiful bungalows newly erected upon the magnificent grounds.' Where, oh, where, are the 'beautiful bungalows'? Perhaps they are only in seed and will grow, with the aid of lots of rain and sunshine. The motor busses which 'meet all trains to convey the owners to their newly acquired plots' are perhaps stored up in the bungalows. They certainly can not be seen by the naked eye," challenged the disappointed Bronx matron.

"Come, daughter; we will investigate and see if our lots really exist in this wilderness or whether they are of the imaginary sort that can only be found on that well-printed map that our genial friend, the real-estate promoter, showed us? No doubt if we follow these other disappointed buyers we will find some one able to direct us out of this woods."

"There's the man who sold us our lots sitting on the rail of that porch, mother," declared the daughter after a walk of about a half a mile along the winding gravel road leading from the station to a small frame building situated on the water front.

"Call him, daughter." The daughter called, and a tall, well-dressed young man responded.

"Why, Mrs. Mason, I did not expect to see you to-day," declared the real-estate promoter.

"I don't suppose you did," responded the crestfallen woman. "You see I became suspicious and thought that a trip down here to the 'garden spot,' that you so affably describe, would prove beneficial to my health and pocketbook. I am sorry to say that instead of proving a tonic, as you said, it has given me a very decided setback in both cases," was the reply.

"Where is my property?"

"Why, let me see; your property is situated in plat KA block K. A. That is just the other side of the Atlantic City Boulevard. That is just a couple of blocks to the north and a little to the east. If you take the Beechwood Boulevard you will be able to reach the property in a very short time. I am sorry, but I have an important engagement with some folks or I would walk with you to your property. I assure you that the lots are very easily reached," replied the promoter, at the same time making a very hurried departure.

"I suppose you have time enough to inform us when we can get a train for home?" inquired the now irritated matron.

"The next train leaves Beechwood at 3 p. m.," was the quick reply.

"Well, if it does it will carry me away from this swindling place," was her declaration.

"I traveled until I was footsore and weary, and was unable to locate my lots," said Mrs. Mason, when she was found seated in the small, stuffed frame structure that had been erected and labeled as a station by the land company. "If you can find them I will gladly give you title to them. I don't know why the Tribune would allow people to make such false representations as the agent who visited me made. It was the worst kind of a swindle. I had planned to come down, build a nice bungalow, and spend the hot months of the summer on the bank of the cool water of Toms River, but instead I guess I will have to stay in New York and try and forget all about my lost money. Not only that but to think that the agent was so deceitful that he misrepresented the time that the train was to leave the station by four hours. The only train out to-night leaves at 7.38. Good-bye Beechwood, and good-bye hard-earned dollars."

Mrs. Mason was not alone in voicing her sentiments. Miss Elizabeth Griffin, of No. —, was also another sadly disappointed New Yorker who made the long journey only to find that she had purchased property that was sadly lacking in all of the specifications as portrayed to her by a smooth-tongued land promoter.

"I visited the offices of the Tribune commercial department and informed the man in charge that I was suspicious of the real estate that I had purchased,"

said Miss Griffin. "He in turn passed me on to a Mr. Keeler, who gave me to understand that he was acting in the capacity of manager of the enterprise."

"What do you expect us to do?" was the question asked by Mr. Keeler.

"I want you to make good the guaranty that the New York Tribune gives with each of its advertisements," was my reply. "I am not satisfied and want my money back," was my reply. "You have never looked the property over. If you make the trip to Beechwood and then you are not satisfied you can have your money back, but the New York Tribune does not guarantee any real-estate advertisements," was what he said, declared Miss Griffin on the way from Lakehurst to Beechwood.

On arriving at Beechwood, I followed in close touch with Miss Griffin. On alighting from the train she was met by Mr. Keeler.

"Well, Miss Griffin, I never expected to see you down here," was the greeting accorded her by Keeler.

"I am here, Mr. Keeler, and I expect you to stick to your agreement," was the reply made by Miss Griffin.

"I will look you up a little later and then we can talk the matter over."

"Where will I wait?" inquired Miss Griffin of the fast-disappearing Keeler. "Down at the clubhouse or anywhere on the property," as the answer.

Miss Griffin was another of those who failed to find the motor busses to carry the property owners to their respective lots. She walked to the clubhouse and waited. After about two hours, with no signs of Keeler putting in an appearance, she left in quest of Keeler and the location of her lots. During an hour and a half search she finally located her lots. Keeler was not to be found.

The lots are situated on the extreme end of the property proper. They are bounded by the railroad tracks of the Pennsylvania Railroad, Wave Street, and Lonewood Avenue. After spending some time in endeavoring to find out just how much land she was the possessor of, she gave and surrendered the proposition to some one more wise than herself, and started back to find Keeler and inform him that her suspicions had been confirmed, and that she wanted her money back.

After walking through woods and underbrush for a half hour, she was overtaken by the rain, and sought shelter in the station, where she found Mrs. Mason and daughter.

Tiring of waiting, I endeavored to find Keeler. I found him and informed him that I was desirous of purchasing some land south of the station. (Between the station and the water front.)

"All of that property has been sold months ago," was Keeler's reply to my question. "Can't I purchase any property in that section?" "You can if you go down to the clubhouse and buy through speculators." "Can't you sell me any?" "Well, now, I have a friend that has four lots close to the water front, and if you are willing to pay \$400 a lot I believe that I could get you four lots." "Do you mean to say that I would have to pay \$400 a lot if I wished to purchase in that section?" "That is exactly what I mean." "Say, Keeler, don't you mean \$400 for the four lots?" Inquired an assistant of Keeler. "No, Zimmerman, I won't sell for less than \$400 apiece for the lots down there." "Well, I would be willing to sell my four lots for that price myself," was Zimmerman's reply; "In fact, I would sell you mine for \$1,500." "Well, sell yours for as much as you can get," replied Keeler.

He then marked on a map the lots that he was willing to sell for \$400 apiece and told me that I had better purchase soon, as he expected the lots would bring \$2,500 very shortly. Zimmerman marked his on my map and stated that I could reach him at the Tribune commercial department offices.

"But, didn't I see you with Miss Griffin?" inquired Keeler. "Yes; I met her on the train," I replied. "She seems very much dissatisfied with her lots."

"Well, some one has been talking with her. She seems very dissatisfied, and I guess that is as far as she will get," replied Keeler. "She said that you had an engagement to speak to her about her holdings and is waiting for you at the station." "Well, let her wait. I am through with Miss Griffin. She can wait until she is tired, and then I guess she will go home." "Is that a proper way to treat a lady?" "Well, it's the way she is going to be treated. She makes me tired. She has not even looked her lots over, and still she says that she is dissatisfied." "Well, I will say that I took the trouble to show her where your maps stated her lots were. She is very much dissatisfied." "Well, I am

through with her. I am going to get something to eat," declared Keeler, as he started for his walk to the clubhouse.

I informed Miss Griffin that I had a talk with Keeler and informed her that he did not intend to keep his engagement. "I will try and find him," was the reply, as she and I started off in a downpour of rain in quest of the promoter.

After walking for more than an hour we finally decided that a little dinner was more easily found than the disappearing land promoter. After dinner we located Keeler. He was with a party, but as soon as he spied Miss Griffin he walked away. Again he was located, but as Miss Griffin was then tired and wet to the inner garment she did not force her issue with the promoter. He kept at a safe distance and evaded her in every way.

Arriving back at the station, we found some more who had been "swindled."

Mrs. E. Smith, of No. 18 Stockholm Street, Brooklyn, N. Y., a widow with an invalid husband, was one.

"I purchased my property with the idea that I could build a suitable bungalow and bring my invalid husband down here for a much-needed rest," stated this woman.

"I thought that at least there was a road or street leading to my property, but I find that I am located one and a half miles up in a thick woods. There is no road that I could use in bringing my husband from the station to the lots in a wagon or automobile. I purchased the lots under a misapprehension. The man who sold me my lots told me that the streets had been cut through. I thought if they had streets cut through that one would at least find a dirt road, but all I find is tree stumps and underbrush. The worst of the matter is that on his statements I was lead to interest many of my friends. I don't mind losing my money, but how am I to face my friends in the future? They will think that I was in on the swindle." (She was afraid that her husband might hear of how she had lost her money and perhaps it might result in his death.)

Mr. H. Fisher, of No. 146 Essex Street, was another who lamented his loss.

"I purchased eight lots. Four in my own name and four in the name of my daughter," was his declaration at the indignation meeting which was in session in the little station. "The scoundrel who sold me my lots told me that they were situated on the water. I walked at least two miles up north before I finally found what I understood are my lots. The New York Tribune can keep them to do with as they please. I will never come down here again. I have been swindled. It must be some law that could be invoked against these swindlers. I wish that Mr. Hearst could hear of this; I am sure that he would do something to those scoundrels."

Next to join the very much aggrieved crowd was the owner of the Modern Eating Place, of No. 220 Ninth Street, New York. "I thought that anything that the Tribune advertised as good would be at least something more than a plain 'swindle.' After running that series of articles on what they called fake advertisements, I thought that they were O. K. themselves, but I now know that they are the greatest swindlers in the world. They call everyone else swindlers and then when they have you thinking that they are absolutely honest they get you in a fake deal like this. I bought 12 lots and I don't intend to spend any money coming down again. Swindle is too mild a term to use."

William O'Brien, of the Consolidated Gas Co., was another who "burned up his money in Tribune City." "I purchased four lots and a friend the same on the supposition that we were at least getting something for our money, but after one glance at what they are picturing as building lots, we decided that we had been 'hunked.' I would like to give the story to the New York American and have them let the people know what kind of a swindle scheme the Tribune is running."

Car No. 851 of the 7.38 p. m. train of the Central Railroad of New Jersey carried anything but a cheerful party of real estate back to Jersey City. In fact, the trip back each and every one who had made the trip down to the "Garden spot of America's most beautiful summer resorts" voiced their sentiments in solid language that all who occupied a seat in the car were fully aware of the quality of the land that the New York Tribune were thrusting on the unsuspecting reading public in the guise of a subscription premium.

I also want to introduce a clipping from the New York Tribune of January 27, 1915. I do this because so much of the matter that has been introduced was not printed in the Tribune.

There are various clippings of this general character. It says:

Art studios plan for Beachwood. M. M. Burger, new Tribune colony booster. Dr. W. C. Van Valen a recruit. Work at Beechwood, N. J., where lots for summer homes may be purchased for \$19.50 and a six months' subscription to the daily and Sunday Tribune, is being pushed forward rapidly.

Mr. CARLIN. Do you gather from that that you pay \$19.50 plus the price of daily subscription, or whether that includes the daily subscription?

Mr. WATSON. The \$19.50 was only for the lot. The subscription for the Tribune was extra.

Mr. CARLIN. So they had to pay \$19.50 plus the subscription for the newspaper?

Mr. WATSON. Yes, sir.

Mr. NELSON. How much did the total amount to?

Mr. WATSON. I have forgotten the subscription cost of the Tribune. but I can give it to you in just about a moment. I have not one of the contracts at hand, but I think it is somewhere around \$8 a year, or something like that. [Reading:]

A large force of men is at work opening the streets, and gas mains have been laid through Atlantic City Boulevard.

Last Sunday more than 60 persons visited Beechwood and were shown about the property by the Tribune representative. That they were well satisfied with what they saw is shown by the number of unsolicited testimonials which are coming to the Tribune.

M. M. Burger, director of the Associated Art Studios, of this city writes:

"Having recently secured some lots at Beechwood, it is my intention to construct a suitable building for a studio this coming summer. Few places, I believe, are as well adapted for this purpose as Beechwood, and it is favored with not only clear water, pine woods, varied with other varieties of trees, and pure atmosphere, but has the added attractiveness of natural surroundings so pleasing and conducive to the artistic fancy.

"I know of nothing similar in character to this kind of venture, and believe it will receive the hearty cooperation not only of Beechwood people but hundreds of others throughout the State."

Dr. W. C. Van Valen, of Peekskill-on-Hudson, has been so pleased with his survey of the property that he is considering the erection of a sanatorium at Beechwood. In a recent letter he says:

"I believe that the natural advantages of location which Beechwood enjoys, with the added advantage of having the Tribune responsible for its development, will make the town almost an ideal place for such an institution.

"It is my belief that many people will be interested in such a venture, and it is with a view of finding this out that I am writing this letter.

"Should public interest in the proposition be as great as I anticipate, I feel sure that the matter can be pushed, and I will take further steps toward this purpose."

If one-quarter of those who have made application for plans of bungalows finally build at Beechwood, a good-sized community is assured. The Tribune representative can be found on the property every Sunday to direct people to their lots and furnish any information desired.

I am not prepared to make a sworn statement on this point, but I have been informed that up to date Mr. Burger has not built his art studio, and I have been informed that up to date the other gentleman has not built his sanatorium.

Mr. CARLIN. Has there been any building there at all since you were last there?

Mr. WATSON. I am told there are a few small structures. I am going there to-morrow and will be in a position to give the committee a further report on it.

In substantiation of the statement that I made the other day that the train service is a rather difficult proposition, and there are very few trains, I offer in evidence a time-table of the Pennsylvania Railroad and one of the Central Railroad of New Jersey, which are the only railroads that go near this place.

(The time-tables referred to were thereupon received in evidence and marked as "Exhibit No. 65" and "Exhibit No. 66.")

Mr. WATSON. They show, by the way, that it takes the large part of a morning to get there, and if you do not get an early start at night, you can not get out of the place.

So, if anybody bought a lot, with the idea of building a summer home there, and commuting, he would be very much fooled.

I also offer a sketch, which is part of the literature handed out by the Tribune in connection with this matter, which indicates that Beechwood is just across Toms River from Lakewood, and gives you the idea that Beechwood runs right out to Barnegat Bay. I wish to state that the sketch is absolutely misleading, because all of Beechwood is to the left of the little point that projects into the Toms River north of the word "Beechwood" on the sketch.

(The sketch referred to was thereupon received in evidence.)

Mr. WATSON. When we had progressed some way with our case, looking up Beechwood—and I am here going to leave Beechwood for a while and go into some other operations that the Tribune's representative, Mayo, has been in—we thought we ought to look up the records of everybody concerned in handling the Beechwood affair for the New York Tribune.

This took us to Chicago. I did not go, but I had an investigation made through some men on our newspaper in Chicago, and turned what facts I had secured over to the United States Government, and the post-office inspectors then made a trip to Chicago themselves and gathered their information in their own way.

Mr. CARLIN. Suppose you give us the result of your investigation, and place any statement you desire to make in the record.

Mr. NELSON. Unless it is necessary to explain as you go along.

Mr. WATSON. I will try to sum this up in a word. I hate to hand these papers over as they are, because they are nothing, more or less, than unofficial letters from newspaper men in Chicago to me on points I have not verified. They were presented to the Government purely in a confidential capacity, with the statement they had better check up every point in the matter. I do not want everything in these letters to stand as accusations against anybody. I have not verified them, but at least they are the kind of information the Government had to work on, and after the United States postal inspectors got back from Chicago I learned that their investigation showed that everything in these letters was substantially so, in their judgment. This [exhibiting a paper] is to the effect that B. C. Mayo and his son, G. G. Mayo, had worked a similar scheme with the Chicago Evening Post several years ago. They say B. C. Mayo and son are professional promoters, and have conducted propositions similar to the one mentioned herein for a number of years in other large cities, such as Sacramento, Portland, Oreg., etc. They came to Chicago a few years ago and submitted their plan to the Chicago Evening Post and their proposition was accepted. They purchased a large tract of land 198 miles from Chicago by rail, and 12 miles

north of Muskegon, Mich., south and west of Fox Lake. This tract was surveyed and divided up into sections, blocks, and 25-foot lots. A large force of solicitors was employed in Chicago, all supplied with maps, showing the location of the tract. One of these is inclosed. A very attractive booklet was issued, describing the property, and these were distributed broadcast throughout Chicago and suburbs. This particular property is cut-over timber land, worthless for agricultural purposes, as it is covered with brush and second-growth timber. The trees are very small and can not be utilized for lumber.

May I make a suggestion, Mr. Chairman, about this stuff? That instead of attempting to read it now, or handing over these letters, after you adjourn to-day I sit down and, considering myself still under oath, dictate to the stenographer so much of these communications as appears to be essential. There is a lot of it that is not essential, and it would be taking up your time to read it.

Mr. CARLIN. Just get it in some concise form.

Mr. WATSON. In the meantime I will give the Chicago situation as we found it to be. They bought the property at a very low acreage price. They cut it up into lots and sold it so as to get five or six hundred thousand dollars out of it. They had a lake there called Fox Lake. Their original map showed a nice big park around Fox Lake, which was to be for the benefit of all the people who bought the lots, just like the utilities down at Beachwood are to be for the benefit of the people who bought there, as Mr. Wise said. After they sold off a lot of the lots they produced a new map and the park disappeared. It was all cut up into little lots, which they started to sell. They did not sell at the subscription prices that the Chicago Post had advertised, but they sold at prices ranging from \$25 up to, I think, two and three hundred dollars a lot—private sales—and there are many dissatisfied people there at the present time. The park, I said, disappeared. It did not. They narrowed it down to a 25-foot strip. The Mayos and the Chicago Post were going to make the park disappear, but they ran up against some Michigan law, which was to the effect that a lake of this sort had to be held for the benefit of everybody, and therefore they have preserved a 25-foot strip all around for the use of the public at large. At first they had staked out lots down into the water, but when the county authorities got on to them they had to go off 25 feet from the high-water mark so as to leave this strip around the lake. They sold all the rest of it, or as much as they could. They had a little clubhouse there, a baseball park, and all the same kind of tricks they have in the Tribune scheme at Beachwood.

They built a railroad, and I am going to show you a picture of the railroad they built.

Mr. CARLIN. You have not a copy of the contract with the Mayos. have you?

Mr. WATSON. No, sir; that is one of the things I said we would have to get through the grand jury. I now offer in evidence a photograph of the railroad that the Mayos and the Chicago Post built for the use of the people who bought around Fox Lake, in Michigan.

(The photographs referred to were thereupon received in evidence.)

Mr. WATSON. As you will observe, it consists of several very antiquated, old-fashioned open-seat cars, of the old horse-car type, that was discarded in practically every city in the country, except New York, years ago. I boast that New York City is the only city where you can find a duplicate of those cars, where they have a franchise they want to keep alive and where they employ horse cars and keep them running from one week to another. I show you another copy of the same railroad as it runs through the woods to reach Fox Lake.

Mr. NELSON. Is that the only way to reach Fox Lake?

Mr. WATSON. That is the only way to reach Fox Lake unless you get there in an airship.

Mr. CARLIN. Have you a schedule of the railroad?

Mr. WATSON. No, sir; but I show you another photograph showing the end of the same railroad, with the antiquated rolling stock lined up. I show you a photograph of the corner of Oakland Avenue and Englewood Avenue, near Fox Lake, in Michigan, showing that the development there is exactly of the same character as the development in Beechwood, N. J. I show you another photograph of the corner of Englewood Avenue and Kedzie Boulevard, which shows that Fox Lake—I think they called the development there Lakewood. Lakewood is similar to Beechwood, N. J. I show you another photograph of the corner of Kenwood Boulevard and Auburn Boulevard, showing the same thing, and I make the point that these photographs were taken last summer after the development in Michigan had been under way for several years. It is my recollection that it was three or four years, and that is exactly what the situation is going to be in Beechwood, N. J., in 100 years from now.

Mr. CARLIN. How many years?

Mr. WATSON. One hundred. If it were not against the law, I would make a bet on it.

The railroad that we have been looking at has a very interesting history. I am informed that that railroad cost \$48,000—the railroad you were just looking at. Incredible as it may seem, \$48,000 is said to be the price of it. When they formed a lot-owners' association at Lakewood they formed a public-utilities company, and the Mayos had, I think, about half the stock in the utilities company and the lot owners had the rest. So when they started to build a railroad the lot owners had, of course, to come through with some money, and they did, and the price which was charged for this railroad was \$48,000.

Mr. CARLIN. How many miles did they lay?

Mr. WATSON. I think it was 3 miles—and there is a point there, too. The exact distance from Fox Lake to the nearest railroad station, in a straight line, is about 2 miles, but this railroad was run in every direction through the property, apparently with the idea of trying to create a value for the property, at distant points from the lake, at the expense of the lot owners in general. Here is what happened to the railroad when the New York Tribune and the Mayos learned that the New York Tribune and Beechwood were being investigated, and when Henry Wise was retained and when he was getting ready to collect that fee to go on his vacation that Mr. Mar-

shall told me about. There suddenly appeared out in this Lakewood place in Michigan this notice:

SPECIAL NOTICE.

All concessions in the park are now operated by the utilities company in cooperation with the lot-owners' association, and all profits (or losses) go to the company. Your patronage is needed and solicited in order to make utilities stock a profitable investment. Special attention is called to the cafeteria and tent city, where prices are moderate and the best service guaranteed.

THE MANAGEMENT.

The lot owners out there had been trying for some time to get this railroad—such as it was—away from the Mayos, and the Mayos were trying to hold on to the railroad, but with the investigation on here of the Mayos, the Mayos suddenly gave up this wonderful railroad and presented it to the lot owners in Lakewood.

Mr. CARLIN. What has become of the railroad now—is it operated?

Mr. WATSON. I do not know, sir. They had a little newspaper which was published out there, so they tell me, once a month, and this newspaper printed while the Mayos and the Tribune were being investigated here a story about the generosity of the Mayos in suddenly deciding to turn over to the lot owners the railroad. That is in that report I am going to turn over to the stenographer.

The reason for looking up the Chicago end was simply to be able to tell the United States attorney in New York what kind of people there were handling this proposition, which looked so bad on its face in New York. If they had always been practically reputable people it might have meant one thing, but when we found they had done the same thing before, in another city, we concluded that some of the things we did not understand here would probably work out in the same way in the long run, and while that did not affect the actual evidence in the case—of the New York Tribune and Beechwood—it did bring about a condition where the Assistant United States attorney agreed with me that when we got down to a grand jury in New York it would be a very good thing to have a simultaneous Federal grand jury in Chicago, and thus bring out the facts at each end, which would perhaps have a very decided bearing on the Mayos' side of this case, regardless of the Tribune's side.

Mr. CARLIN. That was agreed between you and Mr. Marshall?

Mr. WATSON. Mr. Stevenson and myself; also the post office inspectors, while they never told me what they had in mind, seemed to be under the impression that at the proper time there would be a Chicago grand jury as well as a New York grand jury, to find out just exactly what was the relation. We assumed that the New York Tribune had looked very carefully into the past records of the men it was doing business with, and we wondered how any innocent parties, particularly a newspaper, with able counsel, could, for one moment, have scanned the past record of the Mayos and found out what had happened in Chicago and could have gone ahead with them on the Beechwood, N. J., proposition. Those were important points, we thought, in that they might have a decided bearing on the question of knowledge and intent, in so far as the New York Tribune people were concerned, and when Mr. Wise, in his statement, said that the Tribune's attorneys investigated this matter, then I say that the Tribune's attorneys must have learned of what had hap-

pened in Chicago, and knowing what had happened in Chicago, went into this deal with wide open eyes.

Unless you want me to go ahead, I will start in on——

Mr. CARLIN. We should be very glad, Mr. Watson, so as to save the time of the committee, if you have any matters you desire to be put in the record, to have you turn them over to the stenographer, and if you have another statement to make, we will go on Monday.

Mr. WATSON. I will go to Beechwood to-morrow and be back Monday, and probably be able to answer your questions in regard to Beechwood.

Mr. CARLIN. Very well, the committee will stand adjourned until Monday at 11 o'clock.

(Whereupon, at 4 o'clock p. m., an adjournment was taken until Monday, May 1, 1916, at 11 o'clock a. m.)

SUBCOMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Monday, May 1, 1916.

The subcommittee met, pursuant to notice, at 2.30 o'clock p. m.

Present: Hon. Charles C. Carlin (presiding) and Hon. John M. Nelson.

FURTHER TESTIMONY OF VICTOR A. WATSON.

Mr. CARLIN. You had not completed your statement when the committee took a recess, and we will now be glad to have you go on just where you left off.

Mr. WATSON. The testimony of the postal inspectors to the effect that Mr. Marshall made a statement that the Tribune, in the event of a prosecution, might spend \$100,000 to improve Beechwood, and that might affect the prosecution, caused me to look up some memos. I had made about my conversation with Mr. Marshall, and I wish to state that Mr. Marshall made a similar statement to me. He said that in view of the fact they had retained Mr. Wise and knew the investigation was under way that Mr. Wise would probably get them to dress things up a little bit anyway; but if the prosecution went ahead, they might spend a great deal of money and say they intended to all along, and that the prosecution was premature. He said they might put down sidewalks and put in street lights and macadam roads, etc. I said that this was not at all likely; but even if it did, it did not affect the swindle, in my opinion, because on May 30, 1915, they had done all anybody could hold them to, and Mr. Stevenson agreed with me on that proposition in the presence of Mr. Marshall.

I pointed out to Mr. Marshall there was nothing in the deeds given by the Tribune to the lot owners that would compel them to do any of these things; that they made no such promises in their literature; and that we had very definite evidence that showed they never intended to do it. I told Mr. Marshall that if he had not read the details of the case very carefully there were documents proving this, and I told him of a certain slip of paper which was jointly in the handwriting of myself and the handwriting of either Keeler or

Zimmerman, the two chief operatives of the Tribune, under Mayo, and a letter from one of the Mayos which indicated clearly that they never intended to make any further improvements than were made on May 30, 1915. Mr. Stevenson backed me up in these assertions, and Mr. Marshall asked Mr. Stevenson if this element could be proved, Stevenson agreeing, to my best recollection, that it could. We dwelt on this at length, because I considered it highly important as proof that the money spending was through, and it might be possible for us to arrive at figures which would show what the cost of this enterprise was to the promoters.

Mr. NELSON. You said something about a joint letter of yourself and these other gentlemen?

Mr. WATSON. Yes, sir; which I will introduce as soon as I have given you my statement. I will introduce it as evidence and explain it. I said that I did not care what they spent after that time, because, in my opinion, it would not affect the case and would only show they were frightened at the possible Federal prosecution and were trying to cover up. I said if after that date they paved the streets with gold it could not affect the case, because the swindle had been completed. I meant by it that the charge made was they represented that they were selling this real estate not as a real-estate money-making scheme, but as a circulation building plan, and that they were selling it at practically cost. I also told them that we could use Keeler and Zimmerman before the grand jury to prove that any such improvements had never been intended.

Mr. NELSON. Will you elaborate that later on?

Mr. WATSON. Yes, sir. Mr. Marshall said that this did strengthen things a lot and left no doubt in his mind that instead of being a newspaper circulation scheme it was a big money-making scheme, guilded over, but he still said it would be much easier to secure the conviction of some person or persons if these improvements were never made.

Mr. NELSON. Pardon me there; are you reading from a memorandum that you made at the time?

Mr. WATSON. No, sir; not now. I have some of my memos around different places, and I have just noted down from these things. I have tried to avoid bringing my trunk of papers here again to-day. He said if these improvements were never put in, the case would be much stronger, because it would remove any element of doubt there might be as to what the Tribune intended to, and then he said he would take the matter up again in six months. I told him I would consult my associates about this, but I decided to give Mr. Marshall the benefit of the doubt, and leave it in his hands for two reasons; the first was I thought it was not a good plan to be too insistent with the district attorney, who would have to take my evidence before a grand jury where I would be excluded, because he might not be in thorough sympathy with me, if I did prod him too much, and I figured that if he was out of sympathy with the case, his presentation of the case to the grand jury might be different from his presentation if he was in sympathy. Second, I thought that he, as a lawyer, might see some points that I did not see, and I had better let him have his way.

Mr. NELSON. How else could you do than let him have his way?

Mr. WATSON. I could do nothing except to break faith with him and turn this into a newspaper fight. The question of publicity had come up several times in my talks with Mr. Stevenson, and I said to Mr. Stevenson on that point, "I want you to understand that I am here as a friend of the Government, and not entirely as a newspaper man, so if you find this is an important case, you need have no hesitancy in discussing any point with me; I will consider myself under moral obligation not to make any newspaper use of anything you tell me and I will never print one word until you release me."

Mr. NELSON. Right there, Mr. Watson: What is the motive or the assigned reason, so far as you are familiar with it, for one newspaper of the standing of your newspaper, looking into an affair of this kind?

Mr. WATSON. We have no motive that I know of other than that we look into complaints that are made to our office, regardless of whether they concern newspapers, business concerns, public officials—

Mr. NELSON. There are some newspapers I know, like the newspaper that Col. Nelson used to run in Kansas City—I forget the name—where they take one public improvement up after the other, and put it through. Do you know whether your publisher takes one thing after another and gets behind it and boosts it to any extent?

Mr. WATSON. Yes, sir; frequently. You mean pending—

Mr. NELSON. Improvements for different projects in a public way.

Mr. WATSON. Yes, sir; frequently. In fact, I may say that our newspaper has quite a reputation for that. We call it crusading.

Mr. NELSON. In the general newspaper work, your attention was called to some real-estate scheme which you were appointed, or some one appointed to look into?

Mr. WATSON. Yes, sir.

Mr. NELSON. And in so doing, you came upon this plan of the Tribune, which you have described?

Mr. WATSON. My recollection is that some people wrote letters to our office, saying that there was a real estate scheme of this sort being operated, and that it was not on the level, and that the New York Tribune was concerned in it and in due time I was asked to investigate it and I started—

Mr. NELSON. What was your purpose up to the time you concluded that it was a scheme of such nature that it ought to be turned over to the attention of the district attorney?

Mr. WATSON. I had no particular plan or purpose in it other than to investigate it. We did not know what we might do about it. We had no particular interest one way or the other, except it might make, in time, very excellent newspaper material, if another newspaper were doing something against the public interest, just as it would make good material for newspaper publication if some bank were doing something against the public interest.

Mr. NELSON. You have been engaged in other investigations of this kind?

Mr. WATSON. Yes, sir.

Mr. NELSON. Name some of them.

Mr. WATSON. The prosecution of the New York Herald, for one.

Mr. NELSON. When was that?

Mr. WATSON. About 10 years ago.

Mr. NELSON. What was the result of that investigation?

Mr. WATSON. The conviction of all of the defendants—I think they were all convicted—James Gordon Bennett was convicted.

Mr. NELSON. Were you with the same paper?

Mr. WATSON. Yes, sir.

Mr. NELSON. Working along the same line?

Mr. WATSON. Yes, sir.

Mr. NELSON. With the same motive, so to speak?

Mr. WATSON. Yes, sir.

Mr. NELSON. It is true, then, the newspapers take some credit in working for the public good?

Mr. WATSON. I have always taken these things very seriously myself, and I have always regarded the work I did along such lines as the only important work that I might ever have an opportunity to do in my life, and I have always made it a point of approaching such investigations with an absolutely open mind.

Mr. NELSON. I am not suggesting that your motive would have anything to do with the facts. The facts speak for themselves, but I am simply curious to know, as bearing upon the situation, whether you were trying to get something on a rival paper or not.

Mr. WATSON. No, sir; I do not think it would have made very much difference if this had been any other paper in New York. Sometimes we are on friendly terms with all of them and sometimes we are not on friendly terms with all of them, but this case would have gone to the United States attorney through me, regardless of what newspaper or other interest it might have affected.

Mr. NELSON. You concluded, then, that it would be wiser to submit it to the district attorney's office rather than comment upon it from the point of view of publicity?

Mr. WATSON. Yes, sir.

Mr. NELSON. What did you think would be conserved by that course?

Mr. WATSON. I thought, whether anybody was jailed or not, it would keep a lot of people from buying this property back in the woods, because while I was investigating down there I saw so many others—at least, I saw a few—places that had been real estate developments and which are now deserted.

Mr. NELSON. Why would not publicity on the part of a great newspaper, or perhaps more, have put an end to the swindle, as you call it?

Mr. WATSON. Because if we had given any publicity to it we would have probably been discredited. We would have to prove our case in the newspaper. We would have no opportunity to get witnesses under oath. We could not, even if we wanted to, make good on a case of this sort without a grand jury and sworn testimony.

Mr. NELSON. What do you say to this suggestion, that most of the lots have been actually sold, if not conveyed?

Mr. WATSON. Not at the time I began my investigation. They were right at the height of the selling campaign, and I was saying that if we had made a newspaper fight against the New York Herald back some years ago without the assistance of Henry L. Stimson, who was then United States Attorney, we might have been publishing things about the New York Herald yet, and they would still be publishing their infamous personal column, because we tried, when we were

pretty sure of our case—we tried some publicity—and the New York Herald kept right on, in defiance of our publicity, printing its infamous personals; and I do not know how many days passed by during which we printed articles which must have shown the New York Herald, if they did not know it before, what these advertisements were, and yet they kept right on, and we kept right on with publicity until finally Mr. Stimson said that while the publicity was very praiseworthy, if we kept on printing this sort of stuff—we had gotten beyond the point where publicity was of any avail—if we kept on printing this stuff and reprinting personals from the Herald he might have to indict us.

Mr. NELSON. I just wanted to look at that point of the case.

Mr. WATSON. Do you want anything further about investigations of this sort?

Mr. NELSON. As I said, as far as I am concerned, the facts speak for themselves.

Mr. WATSON. There is one——

Mr. NELSON. I believe it would be well to have an understanding of the practice of the newspapers in making these investigations. If you have another investigation, it might be well to state it.

Mr. WATSON. I will mention another one in which, strangely, Mr. Marshall finally got on one end of the crusade and I was on the other.

Mr. NELSON. This District Attorney Marshall?

Mr. WATSON. Yes, sir.

Mr. NELSON. Give us some facts in reference to that.

Mr. WATSON. That was the case of Joseph A. Flannery, who was a very wealthy member of the New York bar, a gentleman whose practice was largely in the matter of public condemnation land cases, and, without any feeling one way or the other, I was asked to investigate Mr. Flannery and his methods and to print articles about him wherever I found that he was not doing things in a proper way, and I did print a great many articles which gave Mr. Flannery such a reputation that finally the bar association preferred charges against him and he was brought before the bar association. Mr. Guthrie, one of the greatest lawyers in New York, was assigned by the bar association to prosecute him. Mr. Marshall defended Mr. Flannery. Mr. Flannery had become enormously wealthy through his legal practice and, since you ask what we sometimes go through in these newspaper crusades, I will state that on one occasion Mr. Flannery came to the New York American office with his wife, and he at first made some talk to the effect that I had tried to get money from him, and he was invited into a conference of all the editors to make his statements, where he finally admitted that I had never tried to do any such thing, and then he told me he had even thought of shooting me. I hate to put this in the record, because Mr. Flannery is dead.

Mr. NELSON. You do not need to go into the details. I do not desire anything more than the policy of the newspaper men.

Mr. WATSON. I told Mr. Flannery on this occasion that I had no personal feeling against him, and I have no personal feeling against the New York Tribune nor Mr. Marshall. I would rather see people not in trouble than in trouble.

Mr. NELSON. You never had any trouble with Mr. Marshall in the past?

Mr. WATSON. No, sir.

Mr. NELSON. Have you criticized Mr. Marshall in this matter of Mr. Flannery's?

Mr. WATSON. You mean——

Mr. NELSON. In your newspaper.

Mr. WATSON. No, sir; I never have.

Mr. NELSON. You have no grievance against him and he has no grievance against you?

Mr. WATSON. No, sir; we never made any connection with the Flannery case, because I was not a witness at all. It was simply my publications that started Mr. Flannery in his troubles.

Mr. NELSON. You were going to look over some papers that you had and select the essential matters for us. Have you done so?

Mr. WATSON. Yes, sir; but I am going to try and finish the testimony as briefly as possible.

Mr. NELSON. Very well.

Mr. WATSON. I was saying that Mr. Marshall never made any statement to me to the effect that he did not think the law had been violated and no statement to the effect that I was to consider the case dropped. We even discussed what "cost of the land" meant, and agreed that it was the cost of the land plus the improvements intended, literature, etc.

Mr. NELSON. Right there, Mr. Watson; as I recall your testimony, you said the cost of this two thousand dollar tract was something like \$8,000 plus some interest charges, etc.

Mr. WATSON. No, sir; what I said was it had been sold at auction. What the Tribune paid I have never known.

Mr. NELSON. I think the testimony of the post-office inspectors was that it cost some \$120,000. Was that to be understood for the land and improvements and all?

Mr. WATSON. The land and improvements. Unless they had some secret information that I do not know about, they would not be in a position to testify as to the exact cost of the land. There is a title policy issued against the land for \$90,000, minus improvements, and in this talk with Mr. Marshall, I said that for the purpose of argument, we would consider that possibly the Tribune had paid as much as \$100,000 for the land, and that for the same purpose, we might fix \$150,000 for the improvements, and figure the 33,000 lots at \$17.60 instead of \$19.60, because the Tribune was allowing its agents \$2 a lot commission and it still meant an expenditure of about \$250,000 against an intake of about \$580,000, or more than 100 per cent profit; that is, assuming they would sell all the water front lots at \$19.60, the advertised price, instead of something like \$400 apiece as Zimmerman and Keeler, the Tribune agents, had asked on one occasion, that we had evidence of.

Mr. NELSON. Was this conversation you related with Mr. Marshall the last conversation, or is this a conversation you had from time to time with him?

Mr. WATSON. That was the last conversation I had with him.

Mr. NELSON. Right there: I am curious to know, as a member of this committee, how it is that you had such difficulties in getting before a grand jury in this case; that is, I have understood the practice

there was that the grand jury is in session more or less all the time, and in any little case that is pending, they are constantly bringing people before the grand jury. Now, why was there this difficulty in submitting the bulk of your testimony to the grand jury, and then from time to time taking up witnesses to the grand jury, to be investigated?

Mr. WATSON. I can not answer that question. I made out for Mr. Stevenson a list of a great number of witnesses that I thought ought to be subpoenaed. It was merely in the way of suggesting to him, to help him, and my recollection is that after each name I noted down about the line of testimony that could be expected from those witnesses, or what we might try to prove through them.

Mr. NELSON. So you urged, more or less frequently, that witnesses be subpoenaed to come before the grand jury?

Mr. WATSON. Oh, yes, sir.

Mr. NELSON. What was his objection?

Mr. WATSON. You mean Mr. Stevenson?

Mr. NELSON. Yes; Mr. Stevenson.

Mr. WATSON. He had no objection. He was just waiting, as I understood it, to take the case up finally with Mr. Marshall.

Mr. NELSON. Mr. Marshall was not being consulted, then, while you were thus working with Mr. Stevenson—I mean by you?

Mr. WATSON. No, sir; he turned me over to Mr. Stevenson. I had only two conversations, all told, with Mr. Marshall; that was when I first saw him and when I last saw him. There may have been one other conversation with him. I know I called to see him a number of times, but my best recollection is that he was either out or busy on some end of another case that was in his office then.

Mr. NELSON. Perhaps you covered this, but you can help me get it clear in my mind. How long had you investigated this alleged real-estate deal before you came to the conclusion that it was a subject matter for the grand jury to consider—approximately?

Mr. WATSON. Approximately several weeks.

Mr. NELSON. Then did you go to Mr. Marshall with the evidence you had accumulated?

Mr. WATSON. Yes, sir.

Mr. NELSON. You submitted that to him?

Mr. WATSON. I gave him—he did not have very much time. He asked me—I gave him a general outline of what kind of case it might be, and he said he would put me in the hands of one of his ablest assistants, Mr. Stevenson, and then I had several consultations with Mr. Stevenson, at which we went over all the material I then had, and the material I got from time to time—

Mr. NELSON. That was before they had called for the post-office inspectors to investigate it?

Mr. WATSON. Yes, sir.

Mr. NELSON. Now, then, how long a time, approximately, were the post-office inspectors busy on this?

Mr. WATSON. I should say a couple of months.

Mr. NELSON. Between that time and while you were working with the post-office inspectors, did you urge on Mr. Marshall and Mr. Stevenson that certain gentlemen engaged in this real-estate deal be brought before the grand jury?

Mr. WATSON. I did. I urged Mr. Stevenson—or, at least. I assumed that there was not going to be any trouble about taking a matter of this sort before a grand jury, and I often discussed with him—Mr. Stevenson—or several times I discussed with Mr. Stevenson, while we would work along one line for a time, and get it as far as we could without any authority to make people talk—I would discuss with him what could be developed from that witness when we got before the grand jury.

Mr. NELSON. Now, you have been a newspaper man for a large number of years, and you have undoubtedly had occasion to observe the duties of the grand jury. Where is it that these things are developed?

Mr. WATSON. I will tell you how they are usually developed in New York—

Mr. NELSON. The point is this: Was this case unusual from the way it was conducted—this preliminary investigation?

Mr. WATSON. I should say it was in that we were never given an opportunity to see how strong we could make the case, by getting people under oath.

Mr. NELSON. Now, in other cases—the cases that we have considered here—it occurred to me that it was an easy matter to get a grand jury; that the moment—

Mr. WATSON. Most of the New York Herald case—I will put it this way: before we went to the grand jury in the New York Herald case, the case was nowhere as near as strong as it was when we got through with the grand jury. We knew a crime had been committed, but who had committed the crime, or who had ordered it committed, we did not know.

Mr. NELSON. Now, do you understand that cases have to be made out and completed before the grand jury investigates them?

Mr. WATSON. That is not my understanding.

Mr. NELSON. Do you know whether or not that is the practice in the city of New York?

Mr. WATSON. In any cases that I have ever been concerned in, it is not the practice. There is a different type of practice that the district attorney's follow in New York, where they illegally make use of the name of the grand jury. For instance, it is a common occurrence for a district attorney to issue a subpoena directing a witness to appear before the grand jury, and then, when the witness come to the district attorney's office, for appearance before the grand jury, he is turned over to an assistant district attorney who gets the statements out of him, the witness assuming that he must give them.

Mr. NELSON. We have had very much testimony along that line. Before they send out those cards, there is something pending before the grand jury, is there not—those cards or subpoenas—asking the witness to come before the district attorney's office?

Mr. WATSON. I have seen cases where they used them merely to develop cases.

Mr. NELSON. Before the subject matter is called to the attention of the grand jury?

Mr. WATSON. To the best of my recollection; yes, sir. I will give you a specific instance of one case where Mr. William Travers-Jerome, as district attorney in New York—

Mr. NELSON. That is the State practice?

Mr. WATSON. Yes, sir.

Mr. NELSON. I prefer to—

Mr. WATSON. The testimony I have given has related to both State and Federal. That is the reason I avoided saying "Federal."

Mr. NELSON. I wish you would confine your testimony to the Federal practice. I wish to see if the care which seems to have been exercised in the Tribune case, is unusual or not. The impression I have received, as a member of the committee, is that it would have been an easy matter at any time to bring a matter before the attention of a grand jury. For instance, Mr. Hershenstein's activities in breaking up the alleged bankruptcy ring—men would be sent for scores at a time, to come sometimes before him to be interrogated, and other times before the grand jury. How do you account for the fact in this case men were not brought either before the district attorney's office to be interrogated by the assistant or before the grand jury? Was the district attorney's office relying upon you to make up the case and then handle it afterwards? What was the reason for not bringing the men before the grand jury, as far as you know?

Mr. WATSON. That is going to be a puzzle to me for the rest of my life.

Mr. NELSON. You mean by that you have no idea at all as to the reason?

Mr. WATSON. No, sir; I have no idea.

Mr. NELSON. In your experience, have you ever observed such care taken with reference to any case in which a less important business or individual was interested?

Mr. WATSON. I have not.

Mr. NELSON. Is that care, so far as you know, exercised by the district attorney's office in investigating crimes or misdemeanors?

Mr. WATSON. By that do you mean the care in not annoying the grand jury?

Mr. NELSON. Yes; in not submitting cases to the grand juries before the case has been established beyond peradventure of doubt.

Mr. WATSON. My experience has been mainly in connection with the State authorities; and there I do not think that I ever observed any such care, and I would prefer to refer you to the testimony of the gentlemen you were just telling me about, who is in the United States attorney's office, who told you about how they made use of subpoenas to develop evidence.

Mr. NELSON. I wanted to get your experience as a newspaper man on that subject, but I will not press that any further. You may continue your statement.

Mr. WATSON. In my statement about my last conversation with Mr. Marshall, I referred to a paper that was jointly in the handwriting of Zimmerman or Keeler, of the Tribune organization, and myself. I will read now from the paper, and will be prepared to produce this paper at any time you say. One of the men that I had working as an investigator, had secured a position with the Tribune selling lots, was arranging to sell some lots under my direction, and I told him that I wanted to have some questions answered by one of the principals in the Tribune office. I wrote my questions on this slip of paper, gave them to my investigator, and several days later

he handed them back to me with the answers in lead pencil, which he informed me were in the handwriting of either Keeler or Zimmerman. The questions were:

First. "Are they to remove the tree stumps to make room for building?" And the answer was, "No."

Second. "How are they to fix the streets? Are they going to macadam the streets?" And the answer was, "No."

Third. "How and of what material are the streets to be built?" And the answer was, "Mother earth."

Fourth. "Suppose any people built garages; how close to us could they put the garages?" And the answer was, "Suit yourself."

Fifth. "What is the very nearest point to the water that my friends could get eight pieces of four lots each? These must adjoin, or almost adjoin." And the answer was, "K. B."—that is a point several miles distant from the water front.

Sixth. "Do they guarantee to open all of the streets shown on the map? If so, when?" And the answer was, "They are open."

Seventh. "How much ought it to cost to clear up the trees and underbrush on a lot if they do not do it? Can we make a deal with their people to do it?" And the answer was, "About \$1 a lot—underbrush only. Trees should be left for shading."

Eighth. "Do they have any concern that builds bungalows? If so, get us plans and estimates of some of the kinds they are going to build. We do not want expensive ones; not more than three or four rooms each." And the answer was, "\$200 to \$10,000; anything."

Ninth. "Do they guarantee to take care of the streets and for how long?" And the answer was, "1915."

Mr. NELSON. That would be what time?

Mr. WATSON. Just for the year 1915.

Mr. NELSON. This was in what year?

Mr. WATSON. This was in 1915.

Mr. NELSON. In other words, no time at all, practically?

Mr. WATSON. Well, during that current year.

Tenth. "Can we get gas and from where?" And the answer was, "Toms River."

Mr. NELSON. Get gas from Toms River?

Mr. WATSON. Toms River is near by.

Mr. NELSON. How could they get gas from that river?

Mr. WATSON. That is a town—Toms River; the town of Toms River.

Mr. NELSON. Oh, that is a town?

Mr. WATSON. Yes.

Mr. NELSON. The river is also called "Toms River." is it not?

Mr. WATSON. Yes, sir. This is also part of question No. 10: "Do they bring the gas near the lots we would buy?" And the answer was "No."

A photographic copy of this was turned over to the post-office inspectors and became part of their case.

Mr. NELSON. Where did he get his information? From both of these gentlemen—Keeler and Zimmerman?

Mr. WATSON. One or the other.

Mr. NELSON. One or the other?

Mr. WATSON. Yes; they are two of the men whom I wanted to have Mr. Marshall's office subpoena, with the idea that they could

give us a lot of inside information. For instance, Mr. Stevenson had frequently discussed with me whether it would be advisable or not to subpoena these men on the ground that they might then have a defense in case we wanted to take any action against them. I pointed out the importance of this thing to Mr. Marshall, as I said, as indicating very clearly that they had no intention of going into any elaborate improvements.

Mr. NELSON. That is, you called his attention to these facts in answer to his objection that they might subsequently improve the property?

Mr. WATSON. Yes, sir. And also there was in the case—I presume Mr. Marshall read it, although I do not know; at least it was part of the Government's case—a letter signed by G. G. Mayo, in which he says:

DEAR MADAM: In answer to your letter of May 6 we beg to say—

I will not read all of this letter, and I just read that much to fix the date of it, because the date is not on this copy—

the development of Beechwood is being rapidly completed, and everything will be in readiness at the opening day, May 30, 1915.

That, I considered, as conclusive proof that they had no intention of doing any improving after that date.

Mr. NELSON. On that subject, Mr. Watson, did they make any promises in their literature that they would continue improvements or that they would add or make new improvements to this tract?

Mr. WATSON. No, sir.

Mr. NELSON. That is, they nowhere promised that they would macadamize streets or gravel streets or see that sewers were constructed or anything of that kind?

Mr. WATSON. No, sir. If they had, my viewpoint of the case would have been very different. Then I would have said, "We must consider what the cost of all these improvements will be before we arrive at the cost. We can not, until we see what they have really done, know what it has cost them." Then I would have considered there was no case at all, so far as this point was concerned, until some time in the future there might be a case based on the fact that they had promised to do these things, but had not. That, in my opinion, would have raised a different kind of case.

Mr. NELSON. Mr. Watson, in your testimony on Saturday—I think it was Saturday—you told us of another investigator of yours who had gotten a position in the Tribune office but whose nerve failed for some reason. Will you relate that incident?

Mr. WATSON. Why, he was a young man who was engaged in clerical work and was not a newspaper man of an investigating turn of mind; was not familiar with this sort of thing; and I found that he was constantly afraid that by selling lots he might be injuring somebody, or he might injure himself.

Mr. NELSON. I do not understand quite the significance of that; that he would be doing something that would put him, too, with the Tribune and the Mayos, under the ban of the law, or that he would be subject to some sort of prosecution because he was your agent and acting in their employ—which?

Mr. WATSON. I never could quite conclude what was in his mind, but my opinion was that he was afraid that he might be considered part of the organization that was violating the law.

Mr. NELSON. I see.

Mr. WATSON. And in a report from the gentleman we have just been discussing—he, by the way, was the man who brought me back this slip of paper with the questions and answers on it—in his written report—

Mr. NELSON (interposing). Is there any reason why you can not give his name?

Mr. WATSON. No; no reason.

Mr. NELSON. Then state his name.

Mr. WATSON. Except this reason: I do not know how this case is going to develop, and if the committee has no objection I would much prefer not to give the name.

Mr. NELSON. Very well.

Mr. WATSON. At this time—although at any time the committee can have from me any information it wants—I had rather not spread it on the record now. He says:

When I presented Mr. Watson's list of questions to Mr. Zimmerman and when he had put answers to them, he turned to me and said: "What the hell kind of people are you trying to sell to? They must be a lot of nuts. What the hell do they want for \$19.60? They can not get New York City conveniences for that money."

Which I considered a little additional indication that they had not expected to do any further improving.

On June 9, from another investigator, I received a report of a conversation he had with Dr. W. Dunning, of 1992 Clinton Avenue, New York City; and Dr. Dunning said he had written to the Tribune and asked them when they were going to make the streets that they represented as being there, so that a person can get into the place by a conveyance. They replied that this was done. Now, the post-office inspectors agreed with me that in a case of this sort the case did not altogether depend upon what was in the literature; that the literature used in a mail fraud could, on its face, be absolutely pure and without the slightest suggestion of wrong, and that you did not have to prove your case on literature that had passed through the mails, but that if the mails were used and a swindle were operated in connection with the use of the mails, regardless of the literature, they could get a conviction. For that reason this matter of Dr. Dunning and various other persons who were interviewed I thought was important, because a lot of these people said that the agents of the Tribune had told them the lots they were buying were near the water front, and when they went down to look them over they found them a very great distance from the water front, although no misrepresentation as to the location of the lots was made through the mail itself; but the post-office inspectors said they considered that very good evidence, and Mr. Stevenson said the same thing.

Mr. NELSON. Have you any instance in mind where they made representations, either in writing or through an agent, that a purchaser would get a certain location, favorable, perhaps more near the lake, and was sold some other lot at some other place?

Mr. WATSON. There were a number of purchasers that we found who made claims of that sort, and it was my idea that they should all be taken before the grand jury to make their statements, and that we should then take the agents who had sold the lots before the grand jury and find out if there were general instructions to the agents of this sort, because we had some evidence to the effect that agents were instructed in the Tribune office to refer to the time from the water rather than the distance, and it was by going into these elements of this sort that we hoped to get somewhere on a lot of these outside points, which were aside from the question of whether or not they had made good on their selling at practically cost.

Now, the only other thing I find on the question of improvements is in their literature—and I am now reading from a copy of the booklet which is already in evidence. It says:

Every lot at Beechwood is made accessible by roads, and there are no road assessments or any other kind of assessments for improvements. Each lot is marked with a white stake and with a lot number thereon, and the avenues and streets have signs at every corner.

I could not see how they could say there would be no assessments for improvements, because if any improvements were ever made somebody would have to pay for them. You do not get sidewalks for nothing, and you do not get properly constructed roadways for nothing.

Mr. NELSON. There would be two possibilities there, it occurs to me; one, that there would be no other change made in the nature of the roads than such as nature left it, after they had cut off the trees, or that this company would make the improvements as a gratuity to lot owners, and that therefore there would be no expense to them. Now, which of those constructions did you arrive at?

Mr. WATSON. The only construction I could arrive at is that it was never intended to make any improvements.

Mr. NELSON. Just leave it as it was?

Mr. WATSON. Yes, sir. In fact, I think that these other items that I have read indicate pretty clearly that they did not intend to do anything more, and that is why I always held the opinion that it did not make a bit of difference what they did after they had retained Mr. Wise, and Mr. Marshall had written Mr. Wise; in fact, if they went out to-morrow and spent a million dollars in improving that place I would still maintain that in 1915, when I went to Mr. Marshall, they had not made good on the proposition of selling these lots at practically cost, and that it was not true that this was not a real estate proposition.

Now, as to what you get for your \$19.60, and what they are going to do for you—what they intended to do—I secured some deeds from the Tribune's trustee, such as they give to property owners, and I offer in evidence a copy of one of these deeds.

The deed speaks for itself, but I wish to call your attention to the fact that it guarantees nothing except the conveyance of a piece of property. There is nothing in it concerning any improvements that are to be made, and there is nothing in it that guarantees the ownership of the so-called "clubhouse property." The only thing in it is that the Tribune has a clause to the effect that no part of the property

shall ever be rented or conveyed to any person of any race other than the Caucasian. There are no restrictions of any sort whatsoever.

Mr. NELSON. I see there is a provision that no intoxicating liquors of any nature or name shall be sold or manufactured?

Mr. WATSON. Yes, sir. I could not find, from any examination of that deed, how anybody is guaranteed the perpetual use of anything. There may be some dedication in some way or other, but it is not in that deed, and if any man ever wanted to enforce his rights to the use of the water front or clubhouse, or anything on the strength of that deed, I do not see where he could enforce it.

Mr. NELSON. Did you ever submit this deed to examination by a competent authority on the subject, either an attorney or a real estate man?

Mr. WATSON. I gave one of the deeds to the United States postal inspectors, who told me that they had submitted it to Mr. Stevenson.

Mr. NELSON. What was the conclusion? That it was an ordinary deed or a peculiar form of deed?

Mr. WATSON. I never learned what Mr. Stevenson's conclusion was. We all regarded it just as an ordinary warranty deed. I have here copies of contracts, which I will place in evidence—contract blanks—that were used by the Tribune solicitors when they sold lots.

EXHIBIT No. 44—MAY 11, 1916.

NEW YORK TRIBUNE

Promotion department.

812 Tribune Building. 154 Nassau Street,

New York.

No. 11081.

New subscriber. \$39.20.

Old subscriber. T. 2

(Indicate by X.)

Telephone, Beekman 3000.

This contract is a receipt for \$2.80, payment on Beachwood lot.

City and date, ———, 191—.

No verbal agreements or written alterations recognized.

I hereby agree to subscribe, through a news dealer, to the daily and Sunday New York Tribune for twelve months, for which I agree to pay the usual subscription price. In consideration of such subscription, kindly reserve for me a lot 40x100 ft., or containing 4,000 sq. ft., being lots ———, block ———, plat ———, at Beachwood, Ocean County, N. J., for which I promise to pay \$39.20. Herewith \$2.80 and the balance in sums of \$2.80 every thirty days hereafter until full amount of \$39.20 is paid. It is understood that deed for this lot shall be issued to me when I have made all payments as agreed above. If there is any default in payments for subscription or lot, it is agreed that all moneys paid are to be retained as liquidated damages and not as a penalty.

Accepted, New York Tribune. Signature, ———.

Agent, ———. Address ———. Apt: ———.

News dealer, ———. Tel., ———.

Subscription price by mail is \$8.50 per year, which must be paid in advance.

A receipt for this payment of \$2.80 will also be mailed from the promotion department of the New York Tribune within three days from date. If you fail to receive same, we must be notified at once, otherwise this contract is null and void.

EXHIBIT No. 45—MAY 1, 1916.

NEW YORK TRIBUNE

Promotion department.

812 Tribune Building. 154 Nassau Street,

New York.

No. 10730.

New subscriber. \$78.40.

Old subscriber. T. 4.

(Indicate by X.)

Telephone, Beekman 3000.

This contract is a receipt for \$5.60, payment on Beachwood lot.

City and date, ———, 191—.

No verbal agreements or written alterations recognized.

I hereby agree to subscribe, through a news dealer, to the daily and Sunday New York Tribune for twenty-four months, for which I agree to pay the usual subscription price. In consideration of such subscription, kindly reserve for me a lot 80x100 ft., or containing 8,000 sq. ft., being lots ———, block ———, plat ———, at Beachwood, Ocean County, N. J., for which I promise to pay \$78.40. Herewith \$5.60 and the balance in sums of \$5.60 every thirty days hereafter until full amount of \$78.40 is paid. It is understood that deed for this lot shall be issued to me when I have made all payments as agreed above. If there is any default in payments for subscription or lot, it is agreed that all moneys paid are to be retained as liquidated damages and not as a penalty.

Accepted, New York Tribune. Signature, ———.

Agent, ———. Address, ———. Apt. ———.

News dealer, ———. Tel., ———.

Subscription price by mail is \$8.50 per year, which must be paid in advance.

A receipt for this payment of \$5.60 will also be mailed from the promotion department of the New York Tribune within three days from date. If you fail to receive same, we must be notified at once, otherwise this contract is null and void.

One of them is a form they used where they were selling two lots, and one of them is a form they used where they were selling four lots. These contracts answer the question that you asked the other day about whether or not the \$19.60 included the cost of the paper. The one for two lots says:

In consideration of such subscription, kindly reserve for me a lot forty by one hundred, for which I promise to pay \$39.20. I hereby agree to subscribe through a news dealer to the Daily and Sunday New York Tribune for twelve months, for which I agree to pay the usual subscription price.

Then it says:

Subscription price by mail is \$8.50 per year, which must be paid in advance.

In offering these contracts I wish to point out that there is nothing in them that binds the Tribune ever to do any further improving, and nothing that seems to guarantee the perpetual use of anything in the neighborhood; and even if it did, it is my understanding that anything that might be in the contract would be merged in the deed, and that the deed would be considered as the final contract, if accepted, and that if you wanted to go outside of that deed there would have to be another consideration. In other words, what was not expressed in the deed could never be enforced.

Mr. NELSON. What did you have in mind by saying there was nothing to guarantee the perpetual use? Was it the clubhouse, or what did you have in mind?

Mr. WATSON. The clubhouse, and some of those so-called "utilities" that they speak of in their literature—the beach and the clubhouse, and things of that sort.

I place in evidence another circular of the New York Tribune, dated January 20, 1915, in the course of which it says: "When you view Beechwood in its completed state next summer we want it to exceed rather than come up to your expectations." And that is one of the matters which the Government had which I considered as indicating that there would be no further improving after that opening date.

EXHIBIT No. 46—MAY 1, 1916.

PROMOTION DEPARTMENT.

NEW YORK TRIBUNE,

154 Nassau Street, New York, January 20th, 1915.

OUR POLICY TO OUR SUBSCRIBERS AND ITS RESULTS.

We do not overstate our Beachwood proposition in our literature. We do not want to. We not only want to secure your subscription and friendship, but we want to keep it, and we feel that one of the surest ways to do this is to give you something more than we promise in our literature.

When you view Beechwood in its completed state next summer we want it to exceed rather than come up to your expectations. That this policy is bringing in good returns is brought out by the number of letters of appreciation that we have already received. Let us quote an example or two.

Mr. Henry A. Low, president of the First National Bank, of Toms River, N. J., in a letter to us under date of Dec. 17th, says that he has known this property (Beachwood) for forty years, and considers it one of the best in this vicinity for development as a summer resort, and it is also as well adapted for a winter resort as our neighboring town of Lakewood. Mr. Low goes on to say that he feels sure that we will make a success of our undertaking.

Ex-Senator Eugene F. O'Connor, of 44 Court St., Brooklyn, N. Y., states that on Thanksgiving Day, Nov. 26th, 1914, he visited Beachwood. He says he found the property to be better, if possible, than represented, and prefers it very much to Lakewood. He says that no one of his acquaintance will ever regret getting a lot.

We have many more of these letters, all written in the same strain. Surely these are the best evidences of the success of our new development and our policy to not only gain subscriptions but, by serving the best interests of our subscribers, to retain them after we have obtained them.

Yours, very truly,

D. W. WILLIAMS,

Promotion Department the New York Tribune.

I read from a letter signed by G. G. Mayo, of the promotion department of the New York Tribune, on March 18, 1915, in which Mr. Mayo says, among other things: "Beachwood is in no sense a real estate proposition, and is rather a subscription offer to secure the friendship and good will of a large number of people in a very short space of time," and in the same letter Mr. Mayo says: "There is nothing to be saved by buying from the office direct, inasmuch as our agents are regular employees of the promotion department of the New York Tribune. Neither can we make you any proposition to save your friends money on lots." That was in answer to a question that had been put to the promotion department as to whether or not there were any commissions that could be saved, and the reply was that they were the regular employees of the promotion department of the Tribune.

The public authorities had seen, among my papers, a New York Tribune form, under which they were paying this commission of \$2 a lot to their agents.

Mr. NELSON. That was in a private letter that was in reply to an inquiry; was it that?

Mr. WATSON. Yes, sir. I said the other day that I would read into the record the details of the Chicago case, but I do not think that is necessary at this time.

Mr. NELSON. I think not.

Mr. WATSON. So I will hold them.

Mr. NELSON. We are not concerned with the details of that case, beyond the bearing it might have on disclosing that there had been similar cases.

Mr. WATSON. Yes; and in view of the fact that the post-office officials have testified that they reported that the Chicago case was a fraud—

Mr. NELSON (interposing). Yes; we would prefer not to have too much in the record.

Mr. WATSON. Yes, sir; and I prefer to make it easier for myself. I made a statement the other day concerning a Dr. Robinson, and I want to request that, for the time being, at least, my statement concerning his indorsement be eliminated from the record. I fail to find my memorandum on that point at the present time, and am not prepared to give an of the conversation I had with him then, and I therefore withdraw any reference to that indorsement.

Mr. NELSON. Your statement may stand.

Mr. WATSON. I do not want it, at this time, to stand as any reflection against Dr. Robinson or as any reflection against the Tribune for its use. As I explained at the time, I was testifying in a good many of these things from memory and from records that I had not looked at for a good many months.

Mr. NELSON. Will you be able to find your notes on that matter, do you think?

Mr. WATSON. I have been looking for them. These records have been moved around two or three times, and it may be that the postal authorities have a copy of that statement. If they have, I would prefer to stand on the statement that I gave them, or to exclude it from the case altogether.

Mr. NELSON. Have you been over this tract of land recently?

Mr. WATSON. I was there Sunday.

Mr. NELSON. Will you please tell the committee what you discovered?

Mr. WATSON. I discovered that Mr. Wise's retainer had apparently accomplished something for the owners of lots at Beechwood. I found that since this investigation there had been some improvement throughout a part of the development. I found, for instance—I will speak now of south of the tracks. Beechwood Boulevard, which is a street running from the water front, over 3 miles toward the southerly end of the property, has been approximately two-thirds fixed over with a gravel road, perhaps 12 or 15 feet wide. This gravel road appears to be in better condition than any of the other roads. I find that it is the only road running through the property from north to south that has been touched. I find some of the cross

streets, running from the east to the west end of the property, I should say, possibly five or six of them, have been fixed to the following extent; some gravel has been placed on top of the road, and it looks as if it had merely been dropped on top of the roads as they were. In many places you can already see through the gravel the original sand that was under the gravel—the white sand. I found somewhere in the neighborhood of Double Trouble Road and Beach Avenue a place where there had been a gravel deposit located, and I was informed that the gravel had been taken from there for use in the roads. They had not been compelled to purchase the gravel. I was only in Beechwood a very short time, and had no opportunity to go into details. These roads where the gravel had been dropped, the gravel appeared to be for a width of about 7 or 8 feet, and to have very little depth—just a coating of gravel.

Mr. NELSON. Was there any evidence of travel on these roads?

Mr. WATSON. On some of them; yes.

Mr. NELSON. New roads?

Mr. WATSON. Yes; particularly on Beechwood Boulevard. Beechwood Boulevard always was in better condition than any of these other streets, because Beechwood Boulevard was originally laid out years ago, when this place was known as Hobart City, by the original promoters, and when these developers came along they had very little to do to improve Beechwood Boulevard.

Mr. NELSON. Who would naturally travel on that road? Lot owners or others?

Mr. WATSON. Persons going in to look at lots. Those are about the only people that would ever travel on any of these roads, except Double Trouble Road, which, as I said, is an old county road.

Mr. NELSON. Did you notice any cottages having been built there?

Mr. WATSON. I did.

Mr. NELSON. Where?

Mr. WATSON. Down near the water front I noticed a large number of bungalows; some of them very pretty bungalows. I did not count the number, but I counted, I think, 60, and there were still some I had not counted. One man told me there were spread through the place about 150, but I can not tell you how many there are.

Mr. NELSON. Were these bungalows, all of them, between the railroad tracks and the beach?

Mr. WATSON. Nearly all. There were a few that were south of the railroad tracks, but after getting two or three blocks away from the railroad tracks to the south there was just one bungalow.

Mr. NELSON. What other improvements did you notice besides the roads and the bungalows?

Mr. WATSON. I noticed down around the beach front, south of Atlantic City Boulevard, the roads, for instance, that ran to the clubhouse, and some of them that ran down to the beach, had been treated with gravel, and apparently had had a roller of some sort run over them. Part of Beechwood Boulevard looked as if it had had a roller over it. I tried in the brief time I was there to pick up some information about the character of the work, and I was informed—this is merely gossip—that there had been about 15 teams at work, beginning late last July and running up as far as they could last year. That date, I wish to point out, is after Mr. Wise had reported to the Tribune that there would be no prosecution, and after

the talk of the possibility of later improvements. The cottages or bungalows that were built, a number of them looked as if they had never been lived in, and had been built for speculative purposes; but I went through the place in an automobile, without stopping anywhere to make inquiries, and it looked as if people had lived in some of the houses, and as if there were people who might then be living in them. One informant told me that there had been three families that had lived there all of last winter, and he said that there had been about six boats around the yacht club late last year. I found on Beechwood Boulevard three or four of these bungalow structures, which were being used as real estate offices, and inquired about the cost of water-front lots. One man offered to sell me some lots at two or three hundred dollars apiece, and said that there were some others not so near the water that he would sell as low as a hundred dollars apiece; and I asked him about the value of lots further back, and he said he did not think anybody had lots that they could not get \$19.60 for. I asked him if these lots had been sold for \$19.60—the water-front lots. He said that, so far as he had heard, they had, but that he did not know anything about it. His understanding was, he said, that people bought the lots for \$19.60, and were holding them for a hundred, or two hundred, or three hundred, or four hundred dollars apiece. That I offer merely as gossip picked up on the way. Another man, whose statement I offer as gossip, said that he understood that somebody was holding these lots—the water-front lots—and that people were not getting them for \$19.60, and that some of the promoters were in on the scheme of getting higher money than \$19.60 per lot; but that is purely gossip.

Mr. NELSON. You had no opportunity to make any investigation?

Mr. WATSON. The county clerk's office being closed, I could not examine any of the deeds, and I could offer you nothing on the point of whether they had sold the lots for \$19.60 subsequent to the date of the investigation, or whether they sold them for a higher price, or what the exact situation is regarding those lots at the present time.

Mr. NELSON. You made no examination of any houses upon the balance of the property south of the railroad?

Mr. WATSON. I stopped and looked in one place through the window. There was a sign, "For sale," but I could not go in and make any examination. I could see inside that it was not plastered or anything of that sort, although I was told that some of the higher-priced cottages were being plastered.

Mr. NELSON. After inspecting this tract anew, have you concluded that it is now a bona fide real estate transaction?

Mr. WATSON. I have not.

Mr. NELSON. Why have you not? There are these improvements?

Mr. WATSON. The building of cottages, if it were done by the Tribune, simply accounts for the presence of the cottages. If they were built by lot owners, I can't see that the Tribune has done anything to make it any less of a fraud, and as to the roads, I still figure that that was done subsequent to the date of the investigation, and after the time limit set by them for their completed property to be inspected, and I do not think that if they kept on for the next 10 years spending money, after various investigations, that it

would affect the original proposition: that they had not, at the price of \$19.60, given the public lots at practically cost.

Mr. NELSON. What would you say would be the value, as far as you can estimate, of the improvement of these roads? You suggested that they had dug this gravel out of some accessible gravel pit and had hauled it with some 14 teams.

Mr. WATSON. Yes.

Mr. NELSON. Do you mean to convey the idea that it was mere sham—this improvement?

Mr. WATSON. I regard it so. The cost, it would be very difficult to arrive at from my brief time for investigation; but just estimating that they might have had 15 teams at \$5 a day, and that they might have 2 men to work on each team at \$5 a day more between them, that would be \$150 a day; that would be about \$1,000 a week, or \$1,000 a month; and if they did it for about three months it would be about \$12,000. I have no information as to how long they actually did work or as to how many men they actually did have.

Mr. NELSON. You do not desire, then, to modify your testimony given before you again saw the property?

Mr. WATSON. I do not.

Mr. NELSON. Is that all?

Mr. WATSON. You asked me some time ago about the value and the mentioning of \$10,000 in my early testimony.

Mr. NELSON. I wanted to get your comment on the discrepancy, apparently, between your testimony, so far as I understood it, and the testimony of the post-office inspectors as to the original cost of that property.

Mr. WATSON. What I meant was that there had been a sale—an auction sale—just a short time before the Tribune came into possession of this property at which the place was bid in for about \$9,000. There was nobody there who wanted to bid any more. You will also recall that I introduced or rather read from a letter from the county clerk to the effect that the assessed valuation was \$37,000, and I do not know what they paid. I do not know whether they paid just the \$10,000 or whether they paid more. In fact, that was one of the things I had expected the district attorney's office to develop. I was quite sure that they paid somewhere between ten thousand and one hundred thousand dollars.

Mr. NELSON. I do not know, and I have not the testimony before me, just how the post-office inspectors arrived at their sum. Have you anything to suggest as to the basis of their computation, you being familiar with the investigation?

Mr. WATSON. No; I do not know. For instance, that is explained, and I will try to be very brief with this and then finish. For instance, I told the other day about how this land had originally been in the hands of some Pennsylvanians, and how they got a man named Reece Carpenter to come in with them and form the Pine Bay Co., to take the place of the Pittsburgh Co.; and they then became shareholders in the Pine Bay Co., which was Reece Carpenter's company. And I told you of how Reece Carpenter later on turned over to his wife a claim in the sum of \$79,896 against the Pine Bay Co., and how a relative of his wife's then brought suit against the Pine Bay Co. for \$79,000, and how somebody accepted service for the company, and how the president of the company confessed

judgment, and then about how this property was bid in for \$4,750 by Ernest F. Griffith, and then about how somebody holding an old mortgage for \$8,000 suddenly turned up with the mortgage, and about how there was a foreclosure and a resale. Now, this is where we first find Mr. Mayo in this property. O. T. Carpenter, the son of Reece Caprenter, says that some time in the middle of 1912, "Father got a letter from B. C. Mayo telling him in substance that he had learned that he was the owner of the property at Toms River known as Pine Bay, and asked him if he would sell, and what was his price." Mr. Carpenter explained that his father did nothing about it, but later on wrote to Mayo, and Mayo had a man named M. Edgar Smith go and see him, and Smith and Mayo negotiated, and the elder Carpenter agreed to accept \$75,000 for the property, and, as young Mr. Carpenter says, "A contract to this effect was drawn which had a number of exceptions in it, and was changed several times; the last time was about three days before father died. Smith and Mr. Rush were there, and Smith wanted the matter of his commission separated in the contract. He was to receive, as I remember, 10 per cent. He said this would have to be done, as Mayo would not sign up unless this was in, as Mayo figured also in this end of it." This is where the property was going into the hands of the Tribune. Then he says, "There was to be paid the day the contract was signed \$30,000 cash, and Mayo was to give three notes secured by a mortgage for \$15,000 each. Father's death threw everything into a mess, and F. C. Carpenter"—that is this young man's stepmother, Florence C. Carpenter—"left the house the day after the funeral and took with her various letters and papers."

Then they applied to the Fidelity Trust Co., of Newark, to issue a policy on this property, and the Fidelity Co. declined to issue it, because the original lot owners out in Pennsylvania had never been made parties to the foreclosure, and then they brought about another change in the foreclosure suit, and the mortgage for \$8,000 finally found its way to the United Assets Co., and they instituted foreclosure proceedings against the Pine Bay Co. and all of the original lot owners. This United Assets Co.—Harry M. Williams was connected there, and he was the personal attorney for Florence C. Carpenter, and Ernest F. Griffith, who bid in the property, was a clerk in the First Mortgage Guarantee Co., of Long Island City, another company with which Harry Williams was connected.

Then, on September 26, 1914, Ernest F. Griffith conveyed the main tract to Addison D. Nickerson, the surveyor of the Mayoes, who is still on the job, and who had started his actual surveying work while all this dickering was going on over the title. There is no price mentioned in the conveyance from Griffith to Nickerson, and there is no price mentioned in the conveyance from Nickerson and wife to Bertram C. Mayo, and there is no price mentioned in the conveyance from Bertram C. Mayo and wife to Stanley D. Brown, the Tribune's trustee. So there you see the difficulty of answering the question of what was paid for the property.

Mr. NELSON. You stated in your testimony that they did not have, as I understood you, the data that you had in arriving at your conclusion; is that so?

Mr. WATSON. They had access to this. I am quite sure they had a copy of it.

Mr. NELSON. That is what I am getting at. You had turned this over to them, too?

Mr. WATSON. Oh, yes; and I wanted to get at the actual cost; I wanted to subpoena some of these gentlemen before the grand jury to determine that question. The fact that they had a policy for \$90,000 would look, on its face, as if there had been about \$90,000 paid, but who paid it and when it was paid was never clear, because the handling of all this title business and transfer business indicated very clearly that somebody got stung.

Mr. NELSON. What conclusion, from your study of the conveyances, did you arrive at as to the actual cost per lot to the Tribune of the property for which they asked \$19.60?

Mr. WATSON. It is impossible to answer the question definitely, but I am willing to go on record as saying that, in my opinion, it may run up somewhere, with all improvements, to \$7 a lot, but I do not think it goes anywhere near that figure.

Mr. NELSON. Have you anything else to submit to the committee, Mr. Watson?

Mr. WATSON. No, sir.

Mr. NELSON. Is the Tribune engaged in the sale of these lots at the present time; that is, so far as you know?

Mr. WATSON. Yesterday I was informed that they had sold all the lots and had closed their selling office in Beechwood about a week ago. On that point I might say that on Beechwood Boulevard, between the railroad tracks and Atlantic City Boulevard, I found that there had been constructed several store structures. These store structures were not occupied by any stores. There was a sign in the window of one of them that a delicatessen store would be opened there on or about May 1.

Mr. NELSON. I think those are all the questions I have to ask you.

Mr. WATSON. I think that is nearly everything that I want to put in now.

Mr. NELSON. Have you any other data that you would like to offer—exhibits of any kind?

Mr. WATSON. I do not think so. We have already so much stuff in there; it is all of the same general character. There may be a little more of one kind or another.

Mr. NELSON. The committee is very much obliged to you. Did you want to ask any questions, Mr. Hill?

In the matter of the transferring of the property, just prior to the time it got into the hands of Mayo and the Tribune's trustee, I want to make it clear just why it is not possible to tell whether the Mayo crowd paid \$10,000 or more. I have said that Mayo and Reece Carpenter agreed on a price of \$75,000, but the note phase of this is difficult to understand. Mayo was a shrewd real estate speculator, and why he should be willing to give \$75,000 for a piece of property that had an assessed valuation of only about half that, we could not understand. Since there was talk that Mayo was insisting on his agent was to be declared in for 10 per cent and talk that Mayo was to share in this percentage we wondered if the price was being run up for any purpose. Griffith, who bought in the property for little more than \$9,000, was mixed up with Mrs. Florence Carpenter's lawyer. Recently there was an inquiry into the estate of the deceased Reece Carpenter. Orlando T. Carpenter, son of Reece Carpenter, claims he never got anything out of the property, and Mrs. Carpenter seemed very much excited when we tried to get some information

out of her, and she said she hadn't gotten what she should have gotten. We wanted to know if there had been some agreement made whereby the Tribune's representatives paid her anything that the claimants against the Carpenter estate have never been able to locate or if Griffith, associated with Mrs. Carpenter's lawyer, let Nickerson, acting for Mayo, have the property for about \$9,000. Did Griffith act for himself and make a profit or did he hold any money for Mrs. Carpenter? What was the arrangement? These were some of the points we had hoped to work out before a grand jury so we could arrive at how much the property had cost Mayo and what he had billed it to the Tribune for.

Somewhere in my early testimony I think I said something which might indicate fraud on the part of the executor of the Stanton estate. If I did, I want to correct any such impression, which was an erroneous impression due to the fact that I had not looked at my records for months before testifying. Instead I meant that the early Pennsylvania investors seemed surprised when they learned of the existence of the \$8,000 mortgage. The informal report of Tom Thorp covering his interviews in Kittanning, Pa., will make clear what I had in mind.

I can not state too strongly that I regard the more recent road gravelling by the Tribune in Beachwood as being only in the nature of restitution in fear of the law. If a man got \$500 from me under false pretences, and then when he found me going after him through the district attorney's office he gave me the \$500 back, I would not consider that he had wiped out his crime and I would be indicted for compounding a felony if I tried to avoid prosecuting him because of the restitution. Also, I wish to say that if every purchaser of a lot in Beachwood went down and built a million-dollar house on it that would not in my opinion affect the fact that the New York Tribune had misrepresented the situation in saying that this was not an ordinary real estate proposition, but one in which the lots were being sold at practically cost to make friends and readers. If the Tribune violated the law in the first instance, which it did in the opinion of myself and the postal inspectors, I assert that neither restitution by the Tribune nor activity on the part of lot owners wipes out the violation of law.

VICTOR A. WATSON.

Mr. HILL. No; I think not.

Mr. NELSON. The committee will now adjourn.

(Whereupon at 4.25 o'clock p. m. the subcommittee adjourned, subject to the call of the chair.)

SUBCOMMITTEE OF THE COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D. C., Saturday, May 6, 1916—11 a. m.

The subcommittee met, pursuant to notice, at 11 o'clock a. m.

Present: Hon. Charles C. Carlin (presiding), Hon. Warren Gard, and Hon. John M. Nelson.

TESTIMONY OF MR. CLAUDE A. THOMPSON.

(The witness was duly sworn by the clerk, Mr. Russell.)

Mr. GARD. Give your full name, please, to the stenographer, together with your business address and occupation?

Mr. THOMPSON. Lawyer, 15 William Street, New York City.

Mr. GARD. Are you a practicing attorney in New York City now, Mr. Thompson?

Mr. THOMPSON. I am.

Mr. GARD. Were you formerly one of the assistant United States district attorneys for the southern district of New York?

Mr. THOMPSON. I was.

Mr. GARD. When were you such assistant district attorney?

Mr. THOMPSON. From 1911 to 1913. In 1913 I was appointed a special assistant to the United States attorney in the enforcement of the antitrust law and continued in that capacity until the 30th of April last.

Mr. GARD. You went in first under Mr. Wise, when he was district attorney?

Mr. THOMPSON. I was assistant district attorney under him for special purposes, a special assistant to the Attorney General, and shortly after Mr. Marshall came into the office I was transferred to the antitrust department and made a special assistant to the United States attorney.

Mr. GARD. The antitrust department in the office of the United States district attorney for the southern district of New York?

Mr. THOMPSON. Yes, sir; and I am uncertain whether I still hold the position as special assistant to the Attorney General or not. I never have been called upon to resign, but had been appointed for special purposes, and I assume that when that purpose was finished—

Mr. GARD. Have you severed your connection with the antitrust department in the district attorney's office?

Mr. THOMPSON. I have.

Mr. GARD. Would you object to stating to us how you severed your connection? Was it by resignation?

Mr. THOMPSON. By voluntary resignation.

Mr. GARD. You resigned?

Mr. THOMPSON. Yes, sir; I resigned to resume the private practice of the law.

Mr. GARD. This antitrust department of the district attorney's office—was that under the control of the Attorney General of the United States?

Mr. THOMPSON. Well, that is as is all the United States district attorneys. The main difference, as I understand it, is those of us who are handling proceedings under the Sherman law and the Clayton Act were designated as special assistants, and we were paid direct from Washington rather than from New York, as are the regular assistants.

Mr. GARD. The point I was endeavoring to have fixed in my mind was whether you regarded your work directed by the Attorney General or the district attorney.

Mr. THOMPSON. By both. The practice generally is to make a report to the district attorney. That report is generally by him transmitted to the department at Washington. At other times, and from time to time during the course of an investigation, the special assistants, sometimes upon direct request from the Attorney General and sometimes upon request from the district attorney, are called to Washington to confer with either the Attorney General or Mr. Todd, who is the assistant to the Attorney General in Washington on trust matters.

Mr. GARD. The matter we have here, as you doubtless know, is the matter of hearing evidence on certain charges preferred against District Attorney Marshall by Representative Buchanan, of Illinois, and a memorandum which has been given us by Representative Buchanan, of Illinois, directs our attention to certain evidence to pro-

cure from you, if possible, in the matter of the conduct of Mr. Marshall; and, again, I ask you to remember we are investigating only Mr. Marshall—evidence in reference to certain tobacco combinations of the American Tobacco Co. Is that the name of it?

Mr. THOMPSON. That is one of the companies.

Mr. GARD. Or other companies which were alleged to have been engaged in an illegal combination of restraint of trade. Have you any information concerning any of those cases?

Mr. THOMPSON. I have conducted, on behalf of the department, during the past two or three years, several investigations of companies engaged either in the manufacture or sale of tobacco and its products.

Mr. GARD. You have done that yourself?

Mr. THOMPSON. Yes, sir; with the assistance of a special agent of the Bureau of Investigation of the Department of Justice, who was assigned to assist me and work under my direction.

Mr. GARD. In that work did District Attorney Marshall personally have any part?

Mr. THOMPSON. Only so far as he referred the matters to me for investigation and received my reports during the course or progress of the investigation.

Mr. GARD. Now, from whom did he receive information which he transmitted to you, if you know?

Mr. THOMPSON. I do not know directly; I think most of the information came directly to me, it being generally understood about the office that I was in charge of the tobacco investigations.

Mr. GARD. Do you mean it came directly to you from the Attorney General of the United States?

Mr. THOMPSON. I think the practice is, where a complaint is filed with the Attorney General, that complaint is transmitted to the district attorney with instructions to investigate and report.

Mr. GARD. Yes.

Mr. THOMPSON. And the district attorney in turn refers that to either one of his assistants or one of his special assistants; in case of alleged violations of the antitrust laws it is generally referred to the special assistants.

Mr. GARD. In this instance was the first complaint filed with the Attorney General of the United States?

Mr. THOMPSON. No, you see, in this instance—

Mr. GARD. I mean in the matter of these charges when I say "this instance," but so far as you may understand it you may answer.

Mr. THOMPSON. I can perhaps best make the committee understand the nature of the investigation or perhaps guide you along the line of your inquiry by stating that there were three separate investigations.

Mr. GARD. First, if you will, just answer my question whether the complaint or complaints were filed with the Attorney General of the United States and by him transmitted to the district attorney in New York for investigation—

Mr. THOMPSON. I know of two complaints which were so filed and whether the others were filed with the Attorney General or filed directly with the district attorney's office in New York I am unable to state from recollection.

Mr. GARD. Which are the two you say you have knowledge were filed with the Attorney General?

Mr. THOMPSON. There was referred to me or were referred to me two complaints, the one alleging a violation of the antitrust law by the American Tobacco Co. and the Metropolitan Tobacco Co. and various concerns affiliated with them; the other against the United Cigar Stores and the Riker & Hageman Drug Co., likewise alleging violations of the Sherman antitrust law. Those, I think, were filed some time in the spring of 1915, but I had been engaged in the so-called tobacco investigation from time to time since the fall of 1913.

Mr. GARD. Now, coming to the complaints filed in the spring of 1915, will you kindly advise the committee as fully as you can of these investigations with special reference to Mr. Marshall, acting as district attorney for the southern district of New York, what he did, and what was done by his direction; what reports were made to him and in general anything that would throw light on his conduct in the matter of those investigations?

Mr. THOMPSON. After the complaints, or when the complaints were received by the district attorney's office, they were referred to me for investigation; I think probably because I was already conducting or already had conducted an investigation along the same general lines. Mr. Marshall just gave me general directions to investigate. No limitations were placed upon me by him, and I conducted the investigations and summoned witnesses, obtaining their names from the complainants and from every other source that I could. After the investigation was completed, a report of my findings and recommendations was then transmitted to the district attorney and by him transmitted to the Attorney General.

Mr. GARD. Do you know what report Mr. Marshall, acting as district attorney, did make to the Attorney General?

Mr. THOMPSON. Only in a general way. I know my reports were forwarded by Mr. Marshall. Whether he expressed any opinion either agreeing or disagreeing with my conclusions, I am unable to state.

Mr. GARD. You made the investigation, as I understand it, and you transmitted your reports to Mr. Marshall, and do you think it was the course of procedure that Mr. Marshall in turn transmitted his report to the Attorney General and—

Mr. THOMPSON. I know that because I later had a conference with Mr. Todd of the Attorney General's office, in reference to the report filed by me.

Mr. GARD. Can you advise us of anything that Mr. Marshall did as the district attorney for the southern district of New York that had, for its tendency, any stifling of this prosecution?

Mr. THOMPSON. None whatever.

Mr. GARD. So far as you know, did he participate in good faith in the inquiry which you made as the special assistant in these anti-trust cases?

Mr. THOMPSON. He did not directly participate. The matter was referred to me and I proceeded to conduct the investigation to its conclusion and endeavored to ascertain all the facts, and requested the various witnesses, including the complainants who were before me, to furnish the names of other witnesses, and those other witnesses

were later called before me. many of their statements taken down in writing, and some of them just notes made by myself.

Mr. GARD. You did have some conferences with Mr. Todd of the Attorney General's office. I believe, here in Washington, regarding this same matter?

Mr. THOMPSON. I did.

Mr. GARD. Now, is there anything at all you can advise the committee of what Mr. Marshall did in respect to the investigation, or did or did not do in respect to the investigation of the so-called Tobacco Trusts that was improper?

Mr. THOMPSON. Nothing whatever.

Mr. GARD. Now, I have a reference here to the complaint made by the independent druggists. Do you know anything about that?

Mr. THOMPSON. That complaint has not come to my attention, and may I ask if that is not in reference to the United Drug Co. and the Riker & Hegeman merger which was handled by the United States attorney in Boston?

Mr. GARD. This is a memorandum handed to me by the chairman of the committee, containing an inquiry whether the independent druggists made a complaint to the Department of Justice and whether that had been referred to Mr. Marshall?

Mr. THOMPSON. Not that I know of.

Mr. GARD. You have no knowledge of that?

Mr. THOMPSON. I have not. The complaints to which I referred were made by the Independent Retailers' Association and by the Independent Wholesalers' Association, and then there was a further complaint, as I remember, in a petition made by Mr. Locker.

Mr. GARD. So far as you know, Mr. Marshall had nothing to do with the Independent Druggists' complaint?

Mr. THOMPSON. So far as I know he had nothing whatever to do with it.

Mr. GARD. Do you know who was attorney for the Riker & Hegeman Drug Co. and the Tobacco Combine, as it is called in this paper?

Mr. THOMPSON. Each of the companies under investigation had a separate attorney. The Riker & Hegeman Co. was represented by Isaac H. Levy, formerly assistant district attorney under Mr. Wise; the United Cigar Co. was represented by Sol M. Stroock.

Mr. GARD. With whom is Mr. Levy associated now?

Mr. THOMPSON. Mr. Levy, I think, is a member of the firm of O'Gorman, Battle & Vandiver—Senator O'Gorman's firm.

Mr. GARD. That is the firm of which Mr. District Attorney Marshall was formerly a member?

Mr. THOMPSON. Yes, sir; and to continue, the American Tobacco Co. was represented by Junius Parker; Liggett & Myers Tobacco Co. by Frank S. Fuller—

Mr. GARD. They have a question here which is not especially important—

Mr. THOMPSON. Do you wish the names of the attorneys representing the other companies on the record?

Mr. GARD. Yes; you may give that.

Mr. THOMPSON. P. Lorillard Co. was represented in the first instance by an attorney named Hamilton and later by Thomas S.

Fuller; the R. J. Reynolds Tobacco Co. was represented by Burton Craige; the Metropolitan Tobacco Co. was represented by William N. Cohen and Arthur Cohen, and then there were attorneys representing the various snuff companies, formerly a part of the old American Tobacco Co. If the committee desires, I can give them their names.

Mr. GARD. We are not especially interested in them. I think you have given us the names of enough to advise us as to the attorneys. There is a question submitted to us which we were requested to ask, as to whether or not you have any knowledge of any United States assistant district attorney having been offered a position by the Tobacco Trust—I suppose they refer to that—do you know anything about that?

Mr. THOMPSON. I do not. That is perhaps something with reference to myself. At one time I was asked to consider a partnership with Mr. Burroughs, who was, at one time, one of the attorneys for the American Tobacco Co.—that is, prior to its dissolution.

Mr. GARD. That was just a suggestion as to private partnership between you and Mr. Burroughs?

Mr. THOMPSON. Exactly.

Mr. GARD. It had nothing to do with your conduct of the investigation of the so-called or alleged Tobacco Trust?

Mr. THOMPSON. Nothing whatever and I refused to consider it until I completed my investigation, and told Mr. Burroughs if, after my investigation was completed, he still desired to make me an offer of partnership, I would consider it, but in the meantime I was not free to consider any partnership.

Mr. GARD. Was there anything at all in the course of your experience in the office of the district attorney for the southern district of New York, Mr. H. Snowden Marshall, of which you can advise this committee, in which he did anything that, in your judgment or opinion, was improper to have been done or that he omitted anything he should have done in the proper performance of his duty as such district attorney?

Mr. THOMPSON. I have no information of that character. My observation of Mr. Marshall's conduct has been that he has performed his duties very faithfully and to the best of his ability.

Mr. GARD. There is a roll call in the House, and it is suggested that we go over, and we will resume the hearing at 20 minutes of 12, and we will continue until we can get through with you gentlemen in order that you may leave early in the day.

(Whereupon a recess was taken for 20 minutes.)

Mr. NELSON. How many years have you been acting as assistant in the district attorney's office in New York?

Mr. THOMPSON. Approximately five years.

Mr. NELSON. Approximately five years?

Mr. THOMPSON. Either assistant or special assistant.

Mr. NELSON. When was it you were assigned to the antitrust division?

Mr. THOMPSON. I think some time in the year 1913.

Mr. NELSON. You have continued in that division up to the time you resigned?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. How many assistants were assigned to the investigation of the trusts in the antitrust division in this district attorney's office?

Mr. THOMPSON. Why, I think—there is Mr. James R. Knapp, who was handling the sugar case exclusively; then Mr. Guyler and myself, who were handling other cases that came to the office.

Mr. NELSON. There were three assistants, then, that were investigating complaints against the trusts?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. You say there was a complaint against the sugar—

Mr. THOMPSON. There is pending and undetermined now an action of dissolution against the American Sugar Co. and affiliated companies. The testimony has all been taken and the parties are preparing their briefs, preliminary to argument before the judges of the district court.

Mr. NELSON. While you were acting as assistant, you were tendered a position as a partner of the attorney who had been acting for the tobacco company, as I understand it?

Mr. THOMPSON. I say tendered a position as partner. I was not. Perhaps I did not make myself clear as to that. I had known Mr. Burroughs for some time. He had been an attorney for the old American Tobacco Co.

Mr. NELSON. Was he, at the time he made this offer to you, an attorney for the tobacco company?

Mr. THOMPSON. No, sir; he was not.

Mr. NELSON. What?

Mr. THOMPSON. He was not.

Mr. NELSON. When had he severed his relations with the tobacco company?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. I say "when"?

Mr. THOMPSON. He did represent some of the companies which were not under investigation.

Mr. NELSON. That were affiliated with the so-called Tobacco Trust?

Mr. THOMPSON. Had been prior to the dissolution; for instance, the McAndrews & Forbes Licorice Co.

Mr. NELSON. At the time he was talking to you about becoming a partner, was he representing either the parent company or subsidiary companies? I refer now to what is called the Tobacco Trust.

Mr. THOMPSON. Yes, sir; the McAndrews & Forbes Co. was one of the licorice companies, a subsidiary in the old American Tobacco Co. prior to its dissolution. I say perhaps I did not make myself clear as to that. Mr. Burroughs did not exactly tender me a partnership. We were living at the same club, and Mr. Burroughs's health was giving away, and he told me it was necessary for him to obtain some other assistant or some one to take care of the work in his business and asked me if I would consider becoming affiliated with his office. When I told him that I could not consider anything until after I had completed my report, he said to me that he did not know that I had not finished all my work with the tobacco, and had not reported; otherwise he would not have made the suggestion to me.

Mr. NELSON. Very well. Now, you stated that there were three complaints made with reference to the tobacco company?

Mr. THOMPSON. Well, I say three. There had been many complaints.

Mr. NELSON. Right after the dissolution—let us get the time. Now, when did the final dissolution of the tobacco company take place?

Mr. THOMPSON. The opinion of the Supreme Court was rendered in May, I think, 1911. It was remanded by that court back to the circuit court to enter the decree in conformity with the opinion of the Supreme Court. The circuit court approved a decree dissolving the old company into 14 companies, and that decree was entered on November 16, 1911, to become effective, as to parts of its provisions, 60 days thereafter.

Mr. NELSON. So that the time would be—

Mr. THOMPSON. February of 1912, to make it accurate, when it became effective, as to its provisions.

Mr. NELSON. What was the nature of the decree? Was it not an injunction against these practices?

Mr. THOMPSON. The decree was one dissolving the old American Tobacco Co. into 14 component parts, called the disintegrated companies. The tobacco business, strictly speaking, was divided between four companies, namely, the American Tobacco Co., Liggett & Myers, T. Lorillard, and the R. J. Reynolds Co. The snuff business was divided between three, namely, the American Snuff Co., the Weyman-Bruton Co., and George W. Helm Co. The licorice business was divided into two companies, namely, the McAndrews & Forbes Co. and the J. S. Young Co. The foil business was divided between two companies, namely, the Connell Foil Co. and the Johnson Foil Co. There are various others, such as the American Stogie Co., the American Cigar Co., the Megel Box Co. That decree further provided—

Mr. NELSON. That is all I am getting at.

Mr. THOMPSON (continuing). That various of the former subsidiaries should be dissolved, and then the decree contained certain injunctive provisions, some of them permanent and some of them extending for a period of three years, and some of them extending for a period of five years.

Mr. NELSON. Which has expired—which injunctive provisions have expired?

Mr. THOMPSON. Those limited to three years. Without having the decree before me, I—

Mr. NELSON. At what time would they have expired?

Mr. THOMPSON. In February, 1915.

Mr. NELSON. 1915?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. While you were investigating they were all in force?

Mr. THOMPSON. Yes, sir; they were in force.

Mr. NELSON. Now, what was the first complaint that was referred to you for investigation?

Mr. THOMPSON. It was a complaint alleging a violation of the Sherman Antitrust Act by the Metropolitan Tobacco Co. and its affiliated companies and by the American Tobacco Co. and the three other disintegrated tobacco companies.

Mr. NELSON. Who made the complaint?

Mr. THOMPSON. I am unable to answer that. I think that it grew out of a suit instituted in the southern district of New York by **John A. Locker**, which suit was for damages under the seventh section of the Sherman Act and was brought to trial in the District Court for the Southern District of New York, if I remember correctly, in 1913.

Mr. NELSON. What was the result of that suit, if you know?

Mr. THOMPSON. A decree was entered dismissing the complaint, as I remember, from which an appeal was taken, and it was confirmed by the circuit court of appeals and an appeal taken to the Supreme Court, and before submission to the Supreme Court, I understand, the case was settled.

Mr. NELSON. Now, what was the next complaint that came to your attention?

Mr. THOMPSON. I may say that that complaint involved likewise an allegation or a contention that by virtue of the relations of the four disintegrated companies with the Metropolitan Tobacco Co. and its subsidiaries, that a provision of the decree was being violated.

Mr. NELSON. Do I understand this, then, that the complaints of all had relation of these companies?

Mr. THOMPSON. These complaints of which I have spoken later—

Mr. NELSON. You stated, as I understood you, that there were three different complaints that you investigated?

Mr. THOMPSON. I investigated more than three complaints. I investigated many, many complaints and finally culminated in an investigation pursuant to the direction of Mr. McReynolds, the former Attorney General, involving an effort to ascertain whether or not any provisions of the decree, so far as it affected the manufacture, sale, and distribution of tobacco products, was being violated; whether or not the companies, into which, or between which the tobacco and snuff business had been divided, had engaged in a new combination or conspiracy; and third, whether the decree as entered by the circuit court effectually carried out the mandate of the Supreme Court and remedied the conditions of which the Government complained in its original suit. Those were the complaints; and that was the extent of the investigation, so far as it affected the manufacturing companies. There was in addition, and correlated with that, a complaint alleging that the Metropolitan Tobacco Co. and its affiliated companies, which were jobbing concerns as contrasted with the manufacturing concerns, were violating the provisions of the antitrust act with respect to distribution of manufactured tobacco products in the Metropolitan district; that is, the district including New York City, Long Island, and a portion of New Jersey, and a portion of Connecticut.

Mr. NELSON. Did you conduct the investigation?

Mr. THOMPSON. I did.

Mr. NELSON. Did you have assistance of any kind?

Mr. THOMPSON. Mr. Williamson, of the Bureau of Investigation of the Department of Justice, was assigned to assist me, and from time to time other agents of the Department of Justice or the Bureau of Investigation, at my request, were directed to make specific inquiries in particular parts of the country in which they were located.

Mr. NELSON. Did you have any accountants that investigated the books of the company?

Mr. THOMPSON. I had the assistance of special bank examiners Trumbell and Fernsler.

Mr. NELSON. Who directed their investigation?

Mr. THOMPSON. The work was done under my direction and supervision.

Mr. NELSON. And they reported to you?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. Did you conclude and recommend to Mr. Marshall or to anyone else that there was or was not a violation of the anti-trust laws in these cases?

Mr. THOMPSON. I made an investigation, and the results of my investigation, together with the conclusions and recommendations were submitted to Mr. Marshall in a report in writing and by him transmitted to the Attorney General. I understand, and with due deference to the committee, that the report and facts therein stated and the conclusions and recommendations are in the nature of a confidential communication from a subordinate in the Department of Justice to the Attorney General, and that if I were to disclose the facts therein stated, or the conclusions or recommendations. I would be violating the confidence of the department, and I would respectfully ask the committee to take the matter up directly with the Attorney General, because the report—

Mr. GARD. Such reports as you made were transferred to the Attorney General?

Mr. THOMPSON. They were. I can tell the committee, if it so desires, the nature and character of the work I did.

Mr. NELSON. I want facts. This is an investigation in the impeachment case and one of the first charges made was that Mr. Marshall, as district attorney, had failed to prosecute the trusts. Now, if he has acted under the direction of the Attorney General wholly, I want that fact disclosed and, of course, I desire to ascertain the facts with reference to this investigation, and, therefore, I put this question: What facts did you discover in your investigation that brought you to the conclusion or did not bring you to the conclusion that there was or was not a breach of the laws of the United States under the antitrust statute?

Mr. THOMPSON. The only way I can further answer your question would be to state that, so far as Mr. Marshall was concerned, no limitations were placed upon it, and the investigation was conducted with all the thoroughness that I knew how to conduct it. If it was not thorough in every particular, it is I and not Mr. Marshall who should be blamed.

Mr. NELSON. I am not asking you for conclusions, Mr. Thompson. I desire the facts, and let the subcommittee and the full committee and the House pass upon the conclusions. Now, what facts did you discover in reference to the business of these companies?

Mr. THOMPSON. As I say, the facts found, together with conclusions and recommendations, are embodied in my report, which report is now, I understand, in the hands of the Attorney General.

Mr. NELSON. I am not asking for that. I am asking for what facts you discovered in your investigation.

Mr. GARD. The report is the best evidence. The report is in the hands of the United States Attorney General.

Mr. NELSON. The gentleman has, himself, investigated this, and I think this committee has a perfect right to find out the facts direct from him.

Mr. GARD. My judgment is it has nothing to do with the case. We are trying a case against Mr. Marshall. If he has any evidence that will throw any light upon the facts as related to Mr. Marshall—

Mr. THOMPSON. I have no objection of telling the committee of any instructions received from Mr. Marshall or any knowledge I may have of Mr. Marshall's failure to enforce the law.

Mr. NELSON. As a member of this subcommittee, I am charged with the duty to investigate charges which were made by a member of the House. So far you have been asked for conclusions and not facts. I would like to ask you for some facts with reference to the practices of this alleged trust, either the parent or its subsidiaries. Now, I will first ask you to state what company you first investigated.

Mr. THOMPSON. The Metropolitan Tobacco Co. and its subsidiary companies.

Mr. NELSON. Please detail, as near as you can, your investigation, and what facts you found?

Mr. THOMPSON. I will answer that in so far as I can, without violating the confidences of the department and so far as it affects the investigation into charges by Mr. Marshall or against Mr. Marshall. Upon receiving the complaints alleging in substance that the American Tobacco Co. and its affiliated companies were engaged in a violation of the Sherman Antitrust Act and that the American Tobacco Co., Liggett & Myers, P. Lorillard, and R. J. Reynolds Co., and the Weyman-Bruton Co., and the American Snuff Co., and G. W. Helm Co., were parties to that combination; that the object of that combination was to obtain, for the Metropolitan Tobacco Co. and its affiliated jobbing concerns, a monopoly of the tobacco jobbing business in the Metropolitan district territory. After receiving that complaint I caused an investigation to be made of the books, records, minutes, and contracts of the Metropolitan and its affiliated companies, so far as they bore upon the investigation. I obtained from each of the disintegrated companies and the snuff companies, statements from their books, showing to whom the tobacco products were sold by them within the territory named, under what terms, and the various tobacco products that were sold to their customers, the volume of their business and all special concessions, rebates or other special favors that were extended to any customers, and examined the correspondence in the possession of those companies bearing upon those facts.

Each of the companies under investigation, pursuant to the requests, from me, submitted statements in writing, taken from their books and subject to verification by the accountants or other representatives of the Department of Justice. I then proceeded to examine the record in the case of Locker against the American Tobacco Co. and others and examined or interviewed all parties that were believed to have had any information upon the subject except any parties who, if the criminal laws would be found to have been vio-

lated, would have been granted immunity by the examination. They were not examined. In the course of that examination I think I examined all parties, persons or representatives of concerns that, in the past 15 years, and in some instances covering a longer period—all parties who had therefore been engaged in the tobacco jobbing business in that district. I further examined. I should estimate, between two and three hundred witnesses, most of whom had been engaged in the retail tobacco business for the purpose of ascertaining the general conditions in the tobacco business in the Metropolitan district territory.

Mr. NELSON. Mr. Thompson, your testimony goes to show that you have conducted the investigation admirably. It is very general, however, and I get no light upon the details. I do not question your investigation or the conduct of any office. I am ascertaining facts. Now, having made this very careful investigation, what facts or conditions did you ascertain with reference to this tobacco company that led you to believe that this company was not violating the law?

Mr. THOMPSON. The facts and conclusions which I found with respect to the tobacco jobbing business in the Metropolitan district territory are incorporated in three reports which I may call draft of petitions under the Sherman antitrust law, which were transferred to, and I think now are, in the files of the Attorney General.

Mr. NELSON. What do you mean by "draft of petition"?

Mr. THOMPSON. All proceedings under the Sherman antitrust law are conducted under the supervision of the Attorney General and more direct supervision, as I understand it, than are violations of other Federal laws, because, if you will examine any of the petitions which have been filed, and examine the act, you will find it says, "under the direction of the Attorney General," and therefore, practically every petition states that the "United States of America by so-and-so, its attorney, or United States attorney by and under the direction of the Attorney General institutes these proceedings," etc.

In some cases where an assistant or special assistant is investigating a complaint, he prepares and submits to the department a report. In other instances he submits instead of a report a draft of a petition under the Sherman antitrust law, setting forth such allegations as in his judgment would be proper allegations in a suit under the Sherman Antitrust Act.

Mr. NELSON. In other words they are the foundation for the suit?

Mr. THOMPSON. Yes, sir; in case the report is submitted to the Attorney General and the recommendations and conclusions are that a suit should be begun, then the report is generally transmitted back to the party who wrote it or back to the United States attorney in charge, with directions that a petition be prepared. The short cut would be to prepare a petition alleging such facts as can be proved. Then the Attorney General may pass upon the allegations in the petition and determine for himself whether the allegations are sufficient to institute a cause of action under the Sherman law.

Mr. NELSON. As a matter of fact, you did then prepare a petition setting forth the violations of law that you discovered, with your report to the Attorney General?

Mr. THOMPSON. Setting forth the facts which I had ascertained or in my judgment tended to show a violation of the Sherman antitrust act.

Mr. NELSON. Did you confer with Mr. Marshall as you were investigating, from time to time?

Mr. THOMPSON. I did.

Mr. NELSON. He was your immediate superior?

Mr. THOMPSON. He was.

Mr. NELSON. Did you make any reports, oral or in writing?

Mr. THOMPSON. I did.

Mr. NELSON. What report did you make?

Mr. THOMPSON. The petitions to which I referred were submitted to and tentatively approved by Mr. Marshall.

Mr. NELSON. What was the first date, as near as you can remember, upon which you conferred with Mr. Marshall in reference to your investigation?

Mr. THOMPSON. I conferred with him from time to time from the very beginning. In the tobacco case, I conferred with him, I think, in the fall of 1913 first, and from time to time thereafter we had a great many conferences.

Mr. NELSON. Did you have any conference with Mr. Marshall in which you advised him that in your opinion the facts disclosed warranted a suit for dissolution of this company or for action under the Sherman antitrust law?

Mr. THOMPSON. I would respectfully ask that the committee relieve me from answering that question in that it involves a confidential communication from a subordinate to a superior in the executive branch of the Government.

Mr. NELSON. Mr. Thompson, do you know that this is an impeachment proceeding?

Mr. THOMPSON. I so understand.

Mr. NELSON. That we are proceeding under the Constitution; that this is a grand inquest of the Nation; and that we have a right to ascertain the facts, no matter where they are to be found?

Mr. THOMPSON. I understand, so far as it may affect any affirmative action on the part of Mr. Marshall, either acts of omission or commission by him, that the committee has power to inquire. I do not understand that the committee has power to compel the executive branch of the Government to reveal either the facts ascertained in its investigations or the conferences or communications passing between the head of that department and its subordinates.

Mr. NELSON. I am asking you what passed between you and this gentleman—this civil officer—whom we are investigating, Mr. Marshall. Did you have any conversation with him at any time in which you advised him that in your judgment, after investigation, the facts and conditions disclosed a violation of the Sherman antitrust law with reference to any company?

Mr. THOMPSON. I can only answer that by stating that—

Mr. NELSON. Yes or no. I ask for the answer yes or no.

Mr. THOMPSON. I can not answer the question yes or no.

Mr. NELSON. Why not?

Mr. THOMPSON. Because it is not a question in its nature which— which in its nature can be answered yes or no.

Mr. NELSON. Did you at any time in conversation with Mr. Marshall advise him that you had ascertained facts and conditions which to your mind were violations of the Sherman antitrust law or any other law against the trusts?

Mr. THOMPSON. The facts and conclusions which I ascertained——

Mr. NELSON. Can not you answer that yes or no?

Mr. THOMPSON. Which I reported to Mr. Marshall in a written report, such as I described—I deem that in the nature of a confidential communication to Mr. Marshall and believe were I to reveal that to this committee I would be violating a confidence of the department. I respectfully ask that I be relieved from that; that the matter be taken up directly with the department, because all of the facts upon which you are now interrogating me are incorporated in the written document now in the possession of the Attorney General, and they are much more reliable than my memory, because they were written at a time when it was fresh in my mind.

Mr. NELSON. Do I understand you will decline to answer questions with reference to facts coming under your direct personal investigation touching the violation of the antitrust laws?

Mr. THOMPSON. Well——

Mr. NELSON. In the jurisdiction of Mr. Marshall?

Mr. THOMPSON. So far as any acts of omission or commission on the part of Mr. Marshall are concerned I am quite willing and ready to answer the committee's questions.

Mr. NELSON. Do you not consider that you are assuming the right to judge as to what you shall testify to and that you are testifying to conclusions and not to facts? I wish to interrogate you on facts.

Mr. THOMPSON. I have suggested that the facts concerning what you are interrogating me are incorporated in these written documents, which are far better and more reliable evidence than something which I can give you from my recollection at this present time.

Mr. NELSON. Aside from all reports, is it your opinion that the tobacco company is operating or doing business in conflict with the decree of the Supreme Court or the lower court in the Tobacco Trust case?

Mr. THOMPSON. May I have that question read?

(The stenographer repeated the question, as follows:)

Mr. NELSON. Aside from all reports, is it your opinion that the tobacco company is operating or doing business in conflict with the decree of the Supreme Court or the lower court in the Tobacco Trust case?

Mr. THOMPSON. Well, to answer your question specifically, the decree of the Supreme Court was one remanding the case to the circuit court. I am of the opinion that the companies are not violating the provisions of that decree.

Mr. NELSON. Of the lower court?

Mr. THOMPSON. Of the lower court; yes, sir.

Mr. NELSON. Are they violating the antitrust laws in any form?

Mr. THOMPSON. Well, to what companies do you specifically refer?

Mr. NELSON. Any company within your knowledge?

Mr. THOMPSON. Why, personally, I am of the opinion that the Metropolitan Tobacco Co. and its affiliated companies were organized as instrumentalities for violating the law, and that they acquired and still retain an unlawful monopoly of the tobacco jobbing business in the metropolitan district territory.

Mr. NELSON. What facts have come to your knowledge upon which you base that conclusion?

Mr. THOMPSON. I must again state to the committee that the facts upon which my conclusions are based are incorporated in the written

documents to which I have heretofore referred, and which I understand are now in the possession of the Attorney General.

Mr. NELSON. I want to state for the record that Mr. Carlin, the chairman, is absent, and as these facts are necessary in my judgment for the investigation, I ask that the committee now take a recess in order that he can be present with us.

Mr. THOMPSON. Before you call your recess, may I state that I could not, were I willing to disclose the facts incorporated in those documents, they being the facts which I discovered in the investigation—I could not, if I wished, recall them now.

Mr. NELSON. Let me say to you, to clarify your mind, we, of course, only ask for the facts as you recollect them. We can, if we see fit, call for the reports afterwards to ascertain the facts more in detail, but you can assist us very materially in outlining the facts in giving us at least a suggestion of what these reports will contain, which will advise us whether we want the reports or not.

Let me also say that in this investigation we have frequently had occasion to interrogate other gentlemen who have reported to the district attorney in the matter of—only the other day—in reference to the charges of Mr. Marshall's relations to the Tribune. The post-office inspectors were here and testified. The Chief of the Bureau of Investigation has given testimony and, so far as that is concerned, I, for one, can see no reason why you should not give us an outline of the facts to the best of your ability, and I ask again for you to give us the facts which came to your knowledge, as near as you can recollect them, which led you to believe that this Metropolitan Co. and its subsidiaries were, when you were investigating them, violating the laws of the United States.

Mr. THOMPSON. I can not recall the facts from which the conclusions which I have just expressed were based. I may say, generally, that the written documents to which I referred contain those facts in such a way, or are stated in such a way, as to comply with the rules of pleading. The facts which are set forth are the ultimate facts of which, in the course of the investigation, I obtained evidence which in my judgment would substantiate them.

Mr. NELSON. Did you so advise Mr. Marshall at any time?

Mr. THOMPSON. I have already said that the written documents in question were submitted to Mr. Marshall and were by him transmitted to the Attorney General.

Mr. NELSON. And did you discuss the contents of these documents with Mr. Marshall?

Mr. THOMPSON. Only in a very general way.

Mr. NELSON. But he knew your conclusions?

Mr. THOMPSON. I have reason to believe that he read the reports.

Mr. NELSON. Upon what do you found that belief?

Mr. THOMPSON. Because I believe it is Mr. Marshall's custom in the office to read all reports before transmitting them to the Attorney General.

Mr. NELSON. As a matter of fact, did you not advise with him right along during the investigation?

Mr. THOMPSON. From time to time I have already said I have conferred with him and informed him of the progress of the investigation and outlined, in general, the work I was doing.

Mr. NELSON. And the conclusions you were reaching—the bearing of the testimony for or against the company?

Mr. THOMPSON. I do not quite get the purport of your question. I advised Mr. Marshall from time to time of the progress and course of the investigation and of the manner in which I was conducting it.

Mr. NELSON. Progress, course, and manner—those are very general words. Did you advise him as to whether there was reason to suspect that there has been or was a violation of the antitrust laws?

Mr. THOMPSON. To answer that question specifically, I will state that all the ultimate facts discovered, together with any relief that, in my judgment, the Government was entitled to were incorporated in the written documents which were submitted to Mr. Marshall. But what our preliminary conferences were I am unable to state.

Mr. NELSON. Why not?

Mr. THOMPSON. I can not recollect them.

Mr. NELSON. You can recollect, as a matter of fact, whether you advised him, your superior, either that there was no need of going on with this investigation—these gentlemen are now obeying the laws and are conforming with the decrees—or you advised him to the contrary?

Mr. THOMPSON. I advised Mr. Marshall of my judgment as to whether or not the facts disclosed, ascertained by me in the investigation, disclosed the violation of the law.

Mr. NELSON. That is what I am getting at.

Mr. THOMPSON. What I told him I believe to be in the nature of a confidential communication, and I respectfully ask to be relieved from answering that portion of it. I may say that Mr. Marshall has never limited me in any way so far as the extent of the investigation is concerned or witnesses to be examined.

Mr. NELSON. I am not asking that question. I want to know whether or not there was any fact disclosing a violation of the laws of the United States, in your judgment, and you have said, in effect, that in your opinion the Metropolitan Co. and its subsidiaries were not conforming to the laws of the United States.

Mr. THOMPSON. Exactly.

Mr. NELSON. Then, do you know whether or not Mr. Marshall made a report to the Attorney General?

Mr. THOMPSON. I know that my report was forwarded by Mr. Marshall to the Attorney General. I know there was some disagreement as to whether or not the Locker case, to which I have referred, would effectually bar a successful prosecution by the Government, the Metropolitan Tobacco Co. and affiliated concerns having been successful in that litigation which involved a violation of the Sherman law.

Mr. NELSON. Do you know what Mr. Marshall reported to the Attorney General?

Mr. THOMPSON. I do not know.

Mr. NELSON. As far as you know, you do not know whether he gave an accurate statement of your investigation or not to the Attorney General's office?

Mr. THOMPSON. I know he did, in so far as he forwarded the reports, because I have seen the reports in the Attorney General's office.

Mr. NELSON. You do not know what his recommendation was to the department?

Mr. THOMPSON. My recollection of that is that Mr. Marshall submitted it to the department for its suggestion and approval.

Mr. NELSON. He made no recommendations, then, within your knowledge?

Mr. THOMPSON. That is my recollection of it; that he simply submitted the petition which I prepared to the Attorney General for his approval, if he deemed the facts submitted sufficient.

Mr. NELSON. Did you retain copies of your reports?

Mr. THOMPSON. I think there are copies of the reports which I have retained, which are in the possession of the district attorney's office at the present time.

Mr. GARD. Do I understand the conclusion of your testimony to be, Mr. Thompson, that the investigation was conducted by you; that you made your report to Mr. Marshall with findings of fact and conclusions of law?

Mr. THOMPSON. Not exactly in that form.

Mr. GARD. Well, findings of fact or reports of evidence?

Mr. THOMPSON. The facts were reported to Mr. Marshall only in so far as they were incorporated in the allegation in the petition or in the draft of a petition.

Mr. GARD. And that it was by him, in turn, transmitted to the Attorney General in Washington?

Mr. THOMPSON. Yes, sir; I did not report to Mr. Marshall the detailed facts which the various witnesses before me had revealed. I took all the facts which I had ascertained in the investigation from the testimony of witnesses and from examination of books of companies and reports of the accountants who were assisting me, and did what any lawyer would do, if he had a complaint to draw. I dictated them in the way of setting forth the ultimate facts and not the evidence upon which they were based.

Mr. NELSON. The report would give your conclusions?

Mr. THOMPSON. It would give you the same information that the complaint or petition under the Sherman law would give.

Mr. NELSON. And nothing as to the facts?

Mr. THOMPSON. It would not give you the evidence. It would give you the facts which in my judgment—

Mr. NELSON. The conclusions?

Mr. THOMPSON. No, sir; not conclusions. I pleaded facts. I did not plead evidence.

Mr. GARD. That was in the so-called petition?

Mr. THOMPSON. Yes, sir.

Mr. GARD. And the ultimate conclusion of the entire matter was that this petition, pleading the facts, was submitted to the Attorney General and the whole matter of further prosecution was left in the hands of the Attorney General?

Mr. THOMPSON. So far as I understand, that remains undetermined, and has not been finally passed upon by the Attorney General.

Mr. GARD. I say it is to be passed upon by him as the final arbiter as to whether prosecution will or will not ensue upon the facts and petition submitted by your department to the office of the district attorney for the Southern District of New York?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. How long since you made that final report?

Mr. THOMPSON. I can not—

Mr. NELSON. What year?

Mr. THOMPSON. Sometime during the year 1915.

Mr. NELSON. Of this year?

Mr. THOMPSON. No.

Mr. NELSON. I mean last year?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. Approximately what time—what month?

Mr. THOMPSON. I should say some time after April and I think prior to September—some time between April and September.

Mr. NELSON. You can fix it a little more definite than that—an important report of that kind?

Mr. THOMPSON. I can not for the reason I was engaged at that time on three reports, one, so far as it affects the Metropolitan and its affiliated companies, the other as far as it affected the United Cigar Stores and the Riker & Hegeman Drug Co., and the third so far as it affected the general tobacco conditions throughout the country and including an investigation of the operation of the disintegrated companies under the decree of the circuit court.

Mr. NELSON. What was your conclusion as to the United Cigar Store Co.; that they were or were not conforming to the laws of the United States?

Mr. THOMPSON. I reached the conclusion that neither the United Cigar Stores nor the Riker & Hegeman Co. were violating any of the antitrust laws. I may say, in respect to that, I did not examine the drug end of the Riker & Hegeman matter. I only examined it so far as tobacco and kindred products were concerned.

Mr. NELSON. What facts have come to your knowledge with reference to the drug business?

Mr. THOMPSON. Only about 10 per cent of the business, or less, of the Rike & Hegeman Co. consisted of cigars and tobacco. That is the only part of the business we investigated. I did it because the complaints before me alleged a combination between that company and the United Cigar Stores for the purpose of acquiring a monopoly of the retail business, and I reached the conclusion that they did not have a monopoly and were not violating the Sherman Antitrust Act or the Clayton Act.

Mr. NELSON. The last report dealt with the general condition of the tobacco companies of the United States, you say?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. Please enlarge on the explanation of your investigation of that matter.

Mr. THOMPSON. I am getting a little beyond my depth for the moment, and I think it is advisable, as far as a conclusion was concerned with respect to any companies under investigation, that I should respectfully refer the committee to my written reports, because my memory of them is not absolutely accurate.

Mr. NELSON. Did the subpoena served upon you call upon you to bring copies of your reports?

Mr. THOMPSON. It did not.

Mr. NELSON. It was not a subpoena duces tecum?

Mr. THOMPSON. No, sir; it was an ordinary subpoena equivalent to a subpoena ad test. The reports I say are in the hands of the Attorney General, and copies of them are in the office of the United States attorney, or were, when I left that office.

Mr. NELSON. Have you had any conversation with Mr. Marshall before you testified?

Mr. THOMPSON. I have not.

Mr. NELSON. Or with any of his assistants?

Mr. THOMPSON. I have not.

Mr. NELSON. Did you advise with any person that you were going to testify before this committee?

Mr. THOMPSON. I consulted with the Attorney General this morning.

Mr. NELSON. And in declining to go into details are you following his advice?

Mr. THOMPSON. Substantially.

Mr. NELSON. What did he advise you?

Mr. THOMPSON. He advised me that, in his judgment, the communications between the Attorney General's Office and myself or between Mr. Marshall and myself were in the nature of confidential communications from a subordinate to his superior in the executive branch of the Government and that, except in so far as the questions related to acts of omission or commission by Mr. Marshall, they were privileged. That is the substance of it. I do not pretend to give the exact—

Mr. NELSON. How did you come to go to the office of the Attorney General; were you sent for?

Mr. THOMPSON. I was not. I went there voluntarily, because I had been in the department, and I believed it was my duty to respect and not to violate the confidences of the department. I did not deem the fact that I had severed my connection by resignation as sufficient to waive the privilege.

Mr. NELSON. You are an attorney at law?

Mr. THOMPSON. I am.

Mr. NELSON. If you were called upon to testify in a court of law, would you say that you must not disclose the conversations you had with Mr. Marshall or with any other person outside of the privilege of an attorney with his client?

Mr. THOMPSON. Well, that is altogether too broad a question.

Mr. NELSON. Upon what basis do you decline to furnish the facts in this matter?

Mr. THOMPSON. Upon the basis that the final conclusion and the opinion as to the prosecution or nonprosecution of any case coming within the jurisdiction of the Department of Justice is with the Attorney General; that the conference and communications by his subordinates with him, or by subordinates with his immediate superior in that department, relating to the investigation and facts developed in the investigation of the violation of the law are privileged. Of course, it is not within my province to make suggestions to the committee. All this could be relieved if the Attorney General would consent to release those reports.

Mr. NELSON. You would be willing to go into detail and explain them, would you not?

Mr. THOMPSON. Sir?

Mr. NELSON. You would have no objection to giving the committee the full benefit of your knowledge if they could get those reports?

Mr. THOMPSON. Except as to this: The portion of the information therein contained was obtained from the parties upon the understanding that it was not to be made public, unless in connection with proceedings instituted by the Government against them, and except as thus limited and that limitation, the facts to which it refers are expressly set forth in the report.

Mr. NELSON. To what parties do you refer—these companies?

Mr. THOMPSON. Yes, sir; I mean with respect to the profits they make on a particular brand of tobacco or cigarettes, or formula or character of lease that enters into the manufacture of any particular brand.

Mr. NELSON. Did you make any agreement with them or did you make it through Mr. Marshall?

Mr. THOMPSON. I made that—I asked them for the information. In the first place I went up to their offices, together with the accountant and Mr. Williamson, and asked them to have their records and books submitted by our examination. That was done, but we found it was going to be an interminable task. After a conference between the attorneys and myself I prepared a set of interrogatories, to which written answers were submitted, and included among which were a great many statements which were taken from the books. Some of the questions the companies' attorneys stated they believed they could not be compelled to answer, if the matter was presented to a court, because it involved secret formulæ and details of their business which would have no reference to an enforcement of the law. I suggested that if they would furnish those facts to me, notwithstanding their view that they could not be compelled to, that, so far as lay in my power, they would not be revealed unless it should become necessary to do so in connection with a proceeding against them, and that in the report which I made to the Attorney General that I would incorporate the substance of their reports thus made to me, and that was done.

Mr. NELSON. Did you expect that to bind Mr. Marshall or bind the Attorney General?

Mr. THOMPSON. It was in the nature of a request.

Mr. NELSON. On their part?

Mr. THOMPSON. On the part of the attorneys.

Mr. NELSON. And you said, "So far as I am concerned"—

Mr. THOMPSON. So far as I am personally concerned, I would be bound by it, but so far as my superior officers were concerned I could not speak for them, but I would communicate their request to them.

Mr. NELSON. Was this matter ever called to the attention of the grand jury—your investigation of the Metropolitan Co. and its subsidiaries?

Mr. THOMPSON. No actual grand-jury investigation was conducted.

Mr. NELSON. Were there any subpoenas issued compelling witnesses to come before you or Mr. Marshall or any person in the office?

Mr. THOMPSON. My recollection is that there were requests to attend or appear at the district attorney's office and to consult with me rather than subpoena. I am not entirely certain of that.

Mr. NELSON. Did you see the form of request served upon the gentlemen—ever see them?

Mr. THOMPSON. I supervised their preparation.

Mr. NELSON. What was the nature of the request; was it written?

Mr. THOMPSON. It was on printed forms, simply stating "You are requested to appear before the United States attorney for the southern district of New York on the _____ day of _____ with reference to an alleged violation of the Sherman antitrust law (or whatever it may be)," and it was signed "H. Snowden Marshall, United States attorney," and on the sides "Please ask for Special Assistant Claude A. Thompson," or something to that effect, giving my room number. My recollection is that no formal subpoenas were issued by the clerk, but I am not positive as to that.

Mr. NELSON. You did state that this alleged violation or complaints of violation of the antitrust laws were never submitted to a grand jury to your knowledge?

Mr. THOMPSON. That is my recollection, and I can give you the reason that prompted me in doing so if you wish it.

Mr. NELSON. Very well.

Mr. THOMPSON. Because I believe that the matters which would show a criminal violation of the law had been barred by the statute of limitations, and it did not seem to me that I would be doing my duty if I took up the time of the court and the grand jury with the hearing of an alleged violation of law which, in my judgment, was barred by the statute.

Mr. GARD. I would state for the record in the presence of the clerk, who communicated with Mr. Carlin, that Mr. Carlin has directed me to proceed and said he had some engagement or was about to have an engagement with the Vice President, and he would be here by 2 o'clock.

(At this point the witness was excused for the time being.)

TESTIMONY OF ISAAC OCHS.

(The witness was duly sworn by the clerk, Mr. Russell.)

Mr. GARD. Please state your residence.

Mr. OCHS. I reside in New York city, 218 West One hundred and twelfth Street.

Mr. GARD. And your business occupation in New York is what?

Mr. OCHS. Conducting a retail cigar store.

Mr. GARD. Where is your retail cigar store?

Mr. OCHS. Seventh Avenue and One hundred and twelfth Street.

Mr. GARD. You understand, Mr. Ochs, that the matter under consideration is in the receiving to-day of evidence under charges of impeachment which have been preferred against H. Snowden Marshall, the district attorney for the southern district of New York. Can you give the committee any information about any matter in which you had personal interest or which would throw any light upon any matter of that kind?

Mr. OCHS. In the capacity of being chairman of the Independent Retail Tobacco Association of New York City, I naturally came in contact with a great deal of the activities of the tobacco matters in New York. Mr. Marshall—

Mr. GARD. Will you tell us about that, with especial reference to the connection of Mr. Marshall with the matter?

Mr. OCHS. Personally, I never knew Mr. Marshall, but I appeared before Attorney General Gregory, the United States attorney general, about a year ago, with a committee—I was chairman of the committee—from the retailers of New York in connection with the committee from the jobbers, and our association made a complaint—one of the complaints which the previous witness stated or had stated—one of the complaints that went to the Department of Justice in regard to the monopoly of the Metropolitan Tobacco Co.

Mr. GARD. I understood you were at that time chairman of that committee?

Mr. OCHS. I am yet.

Mr. GARD. Are yet?

Mr. OCHS. Not of that committee. I am chairman of the Independent Retail Tobacco Dealers of New York.

Mr. GARD. You were one of the committee?

Mr. OCHS. Yes, sir.

Mr. GARD. How large was the committee, in membership?

Mr. OCHS. I think there were 26 members present. There were 26 gentlemen that came down.

Mr. GARD. Your committee met the attorney general, Mr. Gregory?

Mr. OCHS. I think, at the invitation of the Department of Justice, they stated a day that we were to come, and if I remember correctly, it was a year ago this month.

Mr. GARD. Had you previously met with District Attorney Marshall?

Mr. OCHS. I never met him personally in my life.

Mr. GARD. Had your committee ever met with him in person?

Mr. OCHS. Whether any of the rest of them did—

Mr. GARD. I mean as a body.

Mr. OCHS. No, sir.

Mr. GARD. You made some arrangements with the Attorney General's office, with Attorney General Gregory, and a day was arranged for your committee to come here, and it did come on that day, and did consult with Attorney General Gregory?

Mr. OCHS. Yes, sir.

Mr. GARD. About—the conditions of the New York market in reference to tobacco—in which you made your complaint directly to the Attorney General?

Mr. OCHS. Yes, sir; and his assistant, Mr. Todd, if I recollect, was present, and also the Attorney General.

Mr. GARD. Mr. Gregory was there, and Mr. Todd?

Mr. OCHS. Yes, sir.

Mr. GARD. And whatever was said was said by Mr. Gregory and Mr. Todd, representing the Attorney General's office?

Mr. OCHS. Both asked a great many questions, and we were, at that time, if you will permit me to state, represented by an attorney who was along with us, the attorney for the Retail Association.

Mr. GARD. Who was the attorney?

Mr. OCHS. His name is Henry H. Hunter. He is still the attorney of the Retail Association. I will also state that we had previously made a complaint by our attorney previous to the visit to the Attorney General's office.

Mr. GARD. The same Mr. Hunter?

Mr. OCHS. Made two complaints, one against the Metropolitan Tobacco Co. and one against the combination of the Riker & Hegeman and United Cigar Stores combination.

Mr. GARD. And had Mr. Hunter, to your knowledge, had a conference with the Attorney General before that—before your committee came over?

Mr. OCHS. I would not like to state, because I have not the information. I think he did.

Mr. GARD. Have you any information at all which you can give this committee or the members of this committee who are now present relative to the connection of District Attorney Marshall with any investigation of the so-called Tobacco Trust or Drug Store Trust, if we may call them by that name?

Mr. OCHS. Only in the tobacco field. After the meeting in Washington we were invited, as a committee of the Retailers' Association in New York, to visit the then investigating committee, composed of Mr. Thompson and Mr. Williamson. I personally was before that committee and they received my evidence. Probably it took three-quarters of an hour.

Mr. GARD. You gave evidence regarding particular transactions of which you had personal information?

Mr. OCHS. Yes, sir; more especially on the deplorable tobacco conditions in New York City, made so, we thought, by the trust conditions.

Mr. GARD. Have you had any conference with the Attorney General since the time your committee was over here?

Mr. OCHS. Only through correspondence. I think we were dismissed at that time by an injunction for our attorney to submit a brief.

Mr. GARD. What was the final outcome of it? Were you advised by the Attorney General that you had not a case sufficient in evidence to be presented to the jury?

Mr. OCHS. No, sir; we were not advised that, but I may be free to say that Mr. Todd in his remarks indicated that the conditions in the Metropolitan section, in so far as the closing of the New York market for tobacco products, so that they would only be distributed through their subsidiaries, as I understand, the American Tobacco Co.; that there seemed to be more people in the metropolitan field who were in favor of dealing with the Metropolitan than were not, and we submitted evidence that this was not true. Our evidence was along lines if anyone had sent letters of that kind to the Department of Justice it was simply a proposition of listening to their master's voice.

Mr. GARD. Whatever evidence you did present was presented through your committee or counsel in this preliminary complaint which was made directly to the Attorney General's office?

Mr. OCHS. At that time.

Mr. GARD. Have you, at any time, made any complaints or had any dealings concerning this matter with the district attorney of the southern district of New York?

Mr. OCHS. To my recollection only through the investigating committee composed of Mr. Thompson and Mr. Williamson.

Mr. GARD. Can you tell us anything regarding that which would throw light upon any conduct of Mr. Marshall in connection with this investigation?

Mr. OCHS. They were uniformly kind and considerate to us when we appeared there—at least to me—and tried to get all the information they could in regard to the tobacco trade in the metropolitan section; and one of the gentlemen told me that the investigation was thorough and he thought that it was more than probable that we would get relief.

Mr. GARD. In that investigation did you come in contact in any way with Mr. Marshall, the district attorney for the southern district of New York?

Mr. OCHS. Never. I never knew him in any transactions at all. I could not say, your honor, that our attorney did not.

Mr. GARD. I am speaking of your own knowledge. Of course, when you appeared as a witness you testified from your knowledge. I understand finally in everything you had to say or whatever knowledge you had of the investigation of these complaints and hearing of evidence upon them they were made either before the Attorney General himself or the assistant in his office in charge of that work or the committee of investigation which was working in the city of New York?

Mr. OCHS. So much—yes sir; that is all between the investigating committee and the one time that we appeared before the Attorney General in person.

Mr. GARD. Can you advise this committee of any particular thing or one act of Mr. H. Snowden Marshall in connection with this investigation in any of its branches or any part of the investigation?

Mr. OCHS. No, sir; I can not.

Mr. GARD. You have no such information?

Mr. OCHS. No, sir.

Mr. NELSON. How long have you been in the tobacco business?

Mr. OCHS. I have been in the retail cigar business for six years; previous to that I was on the road for about fourteen years selling tobacco products.

Mr. NELSON. Traveling for what house?

Mr. OCHS. I traveled at that time for two firms; the first was F. Garcia, of Tampa and New York, and afterwards for Arguilles Lopez & Bro., of the same places—New York and Tampa. I traveled for these two firms for a period of 12 or 13 years.

Mr. NELSON. You have had, then, every opportunity to know the condition of the tobacco business in the city of New York and surrounding country?

Mr. OCHS. I think I am very thorough in it.

Mr. NELSON. What is your opinion—I will ask, first, your opinion—as to the conditions in the tobacco business now compared to what they were before the dissolution of the so-called tobacco trust. Has there been any change for the better?

Mr. OCHS. Conditions, in my opinion, have been far worse.

Mr. NELSON. What oppressive practices or methods can you call to the attention of the committee which lead you to that conclusion?

Mr. OCHS. Well, first, the intolerable conditions of competition in regard to the cutting of prices by the exchange store system, the drug stores, the getting of the very best of locations through their

realty department, giving away of coupons by the retail stores which it is impossible for the individual dealer to compete with, and a chain of subsidiaries, forcing the little retailer to buy his goods from one combination, or from them, which are a part and parcel of themselves, to the exclusion of allowing him the American right of buying his merchandise wheresoever he pleases, and mainly and most of all, the conditions of being the sole proprietor of the tobacco-products situation from the time it is grown in the field until it reaches the consumer. Those have been my views in regard to it and it has been proven time and time again, if you will allow me to say, as far as the little retailer is concerned, if he is allowed to buy his products where he feels free to do so, in a free and open market, he gets the advantage of competitive prices and gets the advantage of terms of credit which they want, which he can not do if it is a monopoly.

Mr. NELSON. Have you noticed in your trade any competition between these companies that have been dissolved—any real competition—or is it your conclusion—

Mr. OCHS. If you will pardon me for saying it—

Mr. NELSON. That they are still operating together?

Mr. OCHS. I think so. What little fight that is shown between the different companies—I could not say they are facts—but they appear to me to be a bluff.

Mr. NELSON. The independent suffers as much now as they did before the dissolution?

Mr. OCHS. Why, if your honor please, they reclothed them in such a way they have more power than they ever had before.

Mr. NELSON. In what way?

Mr. OCHS. The dissolution by the court for the southern district of New York in obeying the mandates of the Supreme Court in the dissolution of the so-called trust was all built up by the southern district of New York situation, and, to use the slang phrase, they made one big trust or four big trusts of about 25 or 30 little trusts, and the four big trusts wield more power than all the little trusts on earth. They divided them up in such a way they are probably stronger in the tobacco field than they were ever before, as far as the retailer is concerned, by the cutting of prices by these stores. If you will allow me to state one case, for instance, this combination of drug stores and the Liggett & Myer and Riker & Hegeman chain of drug stores, or Liggett concerns rather just recently, only less than a month ago, advertised entire half pages in all the New York newspapers that they had special sales days, when they sold different articles of merchandise, where they charged 10 cents for an article they would give double the quantity of articles for 1 cent more—11 cents. They advertised like this: One package of Saulsbury cigarettes, 15; two packages 16 cents. Those cigarettes cost the retailer something over 11 cents or 11½ cents a package.

Mr. NELSON. What was the purpose of that?

Mr. OCHS. The purpose of that was that was an agreement unquestionably with the manufacturers of those cigarettes that they furnish them several millions free, in order to promulgate that advertisement and thereby wipe the little retailer off the face of the earth.

Mr. NELSON. It was, in your judgment, a trust method such as prevailed before the dissolution?

Mr. OCHS. Absolutely. Those are the conditions in the market in New York in the metropolitan section. They have one of those kinds of sales after the other. First, the United Cigar Stores have a combination of that kind in connection with their coupons and on top of that the next day comes along the Schulte chain of stores doing the same thing.

Mr. NELSON. Is that an independent chain of stores?

Mr. OCHS. I do not think they are.

Mr. NELSON. They were no part of that Tobacco Trust which was dissolved?

Mr. OCHS. They recently got up a competitive coupon situation called the mutual coupon, causing more trouble in the market probably than the united coupon ever did.

Mr. NELSON. What is the effect of the present practices on the part of the subsidiaries of the old Tobacco Trust on the independent companies?

Mr. OCHS. I can only answer as far as the independent companies are concerned. Conditions since that dissolution or since the southern district of New York rehabilitated these people, have made it practically impossible for a man to sustain himself and his family through the sale of tobacco products—the independent, I mean.

Mr. NELSON. Are there more independents or less?

Mr. OCHS. They are being eliminated from the field in bunches. They are failing right and left.

Mr. NELSON. As a matter of fact, your conclusion is that these subsidiaries of the Tobacco Trust which you believe to be operating together, is securing possession of the field together?

Mr. OCHS. Absolutely, in my opinion; it is only a matter of time, if the conditions remain the same as they are, until the independent will be eliminated from the field entirely.

Mr. NELSON. And the methods are what? You mentioned something as to competition.

Mr. OCHS. The methods are——

Mr. NELSON. Lowering prices is one?

Mr. OCHS. Cutting of prices; giving away coupons, making it impossible for the independent to buy as cheaply as the exchange-store system buys. I sent proof to the Department of Justice to the honorable Attorney General, Mr. Gregory, which we did previously to the Attorney General, Mr. Wickersham, that we had substantial proofs which are unquestionable, now in the Department of Justice, that the United Cigar Stores bought their merchandise from the trust subsidiaries at, oh, 5, 8, 10, and 15 per cent less than the little dealer could buy them. It gives them all sorts of terms and rebates which the little dealer could not get, thereby enabling them to sell in a great many cases at less prices than what we pay the Metropolitan Co. for them.

Mr. NELSON. There was some complaint in the operation of the cigar-stores companies in squeezing out or freezing out independents. They occupied favorable location—is that practice continuing?

Mr. OCHS. We were asked that question before Mr. Thompson's committee. I was asked that same question before his committee if I could give him any evidence that their realty department had recently——

Mr. NELSON. Since the dissolution?

Mr. OCHS. Since the dissolution, if they had again become active in the renting of stores over little dealers' heads in prominent locations. We could not give that information because we did not have any—at least I had none.

Mr. NELSON. How does this present practice of this tobacco company and its subsidiaries affect the tobacco jobbers' association.

Mr. OCHS. No doubt you will hear from one of the other witnesses about that. Mr. Locker is here. He is a witness.

Mr. NELSON. You speak more directly upon the effect upon the dealers' association?

Mr. OCHS. Yes, sir; the retailers particularly, because I know nothing of the jobbing end of it.

Mr. NELSON. Who was it that stated before your committee when it appeared before the investigating committee that there would be relief?

Mr. OCHS. Both Mr. Williamson and Mr. Thompson. They believed, in their opinion, we would get relief. If your honor will permit me, as far back as when Attorney General Wickersham—when he was in New York—we were invited to meet him before the bar association.

Mr. NELSON. Is that an event before the dissolution?

Mr. OCHS. After the dissolution, when it was before the district court of the southern district of New York. Mr. Wickersham was supposed to be prosecuting them as Attorney General of the United States. At that hearing, I have a distinct memory, he patted me on the back and said, "That is the kind of information we want, and that is the kind of information that will put them out of business and give you people relief."

Mr. NELSON. You did not find any more relief under a Democratic Attorney General than under the Republican Attorney General?

Mr. OCHS. I should not like to bring politics into it. I only want to state the facts.

Mr. NELSON. There is no politics in that question, because I took in both political bodies.

Mr. OCHS. I happen to be the president, for the last five years, of what is called the Independent Retail Tobacconists' Association of New York City. I come in contact with a great many dealers. We have a present membership of five hundred or more. We have been very active in the trade, trying to stand together, to get as much relief as possible from the trust oppression. That has been the main thing, and I will say that they have never gotten any substantial relief of any kind. I am not talking from the line of wanting sympathy or anything of that sort, because I do not think there is any other branch of business or any other commodity that is sold to the consumer by the retailer, that has as many hard times to go through as the tobacco business, and I ascribe it to trust oppression.

Mr. NELSON. What is the prevailing belief, as far as you have ascertained it, in the retail tobacco trade, of your city, as to there being a trust—as to the efficacy of the dissolution of the tobacco trust?

Mr. OCHS. Why, the opinion of everyone that knows anything about it or has made any study of it is that there has been no relief.

Mr. NELSON. That is all.

TESTIMONY OF MR. JOHN ALFRED LOCKER.

(The witness was duly sworn by the clerk, Mr. Russell.)

Mr. GARD. Please give your address.

Mr. LOCKER. 2689 Bushwick Avenue, Brooklyn.

Mr. GARD. What is your occupation?

Mr. LOCKER. Tobacconist.

Mr. GARD. May I ask if you are a wholesale or retail tobacconist?

Mr. LOCKER. I am both jobber and retailer.

Mr. GARD. Mr. Locker, you understand this investigation is one to hear evidence upon charges that were preferred against Mr. Marshall, who is district attorney for the southern district of New York, these charges having been preferred by Representative Buchanan on the floor of the House of Representatives. Among the first charges he makes are charges that Mr. Marshall has willfully failed to properly prosecute certain trusts, naming, particularly, I believe, the Tobacco Trust. Can you give the committee any information about that matter in your own way, about Mr. Marshall's connection with any of these matters?

Mr. LOCKER. Yes, sir; I have had an interview with Mr. Marshall, by request of Attorney General McReynolds, in 1913. I came to Washington to inform Mr. McReynolds of the deplorable tobacco situation in the metropolitan district.

Mr. GARD. Mr. McReynolds was Attorney General?

Mr. LOCKER. Yes, sir; and I came here with my attorney, and Mr. McReynolds said, after listening to what we had to say—he said he was too busy a man to take hold of it and referred us back to Mr. Marshall.

Mr. GARD. Who was your attorney?

Mr. LOCKER. Charles Dushkind. We thereupon went to Mr. Marshall and took up the subject with Mr. Marshall, and we had quite a deal of correspondence, some of which you have here. I sent some down here, and there were no results from that interview that we had. Furthermore, then, Mr. Marshall said he was going to take it up. In the year 1914—

Mr. GARD. Is that in 1913 you had this conference with Mr. Marshall?

Mr. LOCKER. Yes, sir; in the year 1915 I had been on with a committee to see Gregory, in reference to the complaint filed against the Metropolitan Tobacco Co.—this was, I think, some time about this time of the year—and Gregory said that he was too busy a man at the time to take up the matter; that we should write to him, stating such facts as we knew of.

Mr. GARD. Is that the same committee Mr. Ochs was on?

Mr. LOCKER. Yes, sir.

Mr. GARD. And you say at that time Attorney General Gregory and Mr. Todd—

Mr. LOCKER. Yes, sir; and after hearing the grievance of the association, both the jobbers and retailers, Mr. Todd said that they would like to take steps in the matter, but there was not sufficient legal ground to stand upon; he would require more legal ground before they would go ahead with the case.

Mr. GARD. When was that?

Mr. LOCKER. 1915, the last interview we had with Gregory. That was the day of the Lincoln celebration.

Mr. GARD. That was the day the committee was down here?

Mr. LOCKER. Yes, sir.

Mr. GARD. And Mr. Todd said they would require additional evidence before their department would prosecute the so-called Tobacco Trust?

Mr. LOCKER. Yes, sir; then finally, after Mr. Wolf, who was president of the jobbers association, explained the situation, I was asked whether I had anything to say, and I said I would like to take advantage of the Attorney General's request, that I felt I could write stronger than I could give him the facts briefly, and I answered Mr. Todd's question. I said, "Mr. Todd, you have sufficient legal ground to stand upon if you refer back to the fact that they had violated the decree of the circuit court or the Supreme Court, whichever it was, the American Tobacco Co. and, in fact, the disintegrated companies have been telling ever since the decree has been rendered up to 1914, when the American Tobacco Co. voluntarily opened the market—had been selling exclusively through the Metropolitan Tobacco Co., thus perpetuating the monopoly which the Government tried to disintegrate." I thought that was sufficient ground for Mr. Todd to work upon, and did not require any other evidence from the association, but I was willing to give all the facts and all I knew and all my testimony in my case, and I thought it was sufficient for him to act upon for the violation of the decree. I thereupon wrote an eight-page letter to Gregory, setting forth what he wanted, and all I received was a reply from Mr. Todd that he had received my letter and that it would receive attention. That is all I received, and I answered again and told them I had been requested by the Attorney General to set forth such facts which would convince him that the Metropolitan Tobacco Co. was perpetuating that monopoly, and that I thought I was entitled to more than a mere answer such as he had given me. I thereupon got a very sarcastic letter, very brief, simply that he had received my letter and same would receive attention. Since then we have been active in the association and done all we could to get the Department of Justice interested. I have been before Mr. Thompson and Mr. Williamson, who are thoroughly familiar with my case, and I feel as a tobacco jobber, that there is not a man in the United States who can compete with the Metropolitan Tobacco Co., since they have been unlawfully created in 1897, and have grown to such an extent there is no more competition. They are at a point where we can not compete with them, and furthermore, as long as they are in business, they can always reach the disintegrated companies in a round-about way, which no other jobber can accomplish.

Mr. GARD. You made a statement in substance and effect, to Mr. Todd, the Assistant Attorney General, the same statement you are making here?

Mr. LOCKER. I made the statement that the decree had been violated, and I thought that was sufficient evidence to start a suit on to prosecute the American Tobacco Co. at least.

Mr. GARD. After Mr. Todd told you, in his opinion, the evidence was not sufficient, did you have any further conferences with Mr. Marshall, the district attorney in New York?

Mr. LOCKER. No, sir.

Mr. GARD. So that the conclusion of the matter, so far as your information goes, is that having taken it up with the Attorney General, Mr. Todd, one of the Assistant Attorneys Generals, gave it as his opinion that the evidence was insufficient and said he would require more evidence before the department would take up the prosecution?

Mr. LOCKER. Yes, sir.

Mr. GARD. And since that time neither the Attorney General's Department nor the district attorney's department have taken it up?

Mr. LOCKER. No, sir.

Mr. GARD. And you have had no dealings with Mr. Marshall since this conversation with Assistant Attorney General Todd?

Mr. LOCKER. No, sir; I have had no conversation with Mr. Marshall since 1913. That was the only one I had with him.

Mr. GARD. Do you have any information of anything that you care to advise the committee of concerning Mr. Marshall's conduct other than you have told us?

Mr. LOCKER. No, sir.

Mr. GARD. In connection with this case, I mean?

Mr. LOCKER. I have nothing about Mr. Marshall in relation to this case except so far as I have said. It was the only conversation I had—1913.

Mr. GARD. The balance of your efforts and talks were with the Attorney General?

Mr. LOCKER. Mostly; yes, sir.

Mr. NELSON. How frequently were you in conference with Mr. Thompson and Mr. Williamson?

Mr. LOCKER. Not very often.

Mr. NELSON. How many times, approximately, did you appear?

Mr. LOCKER. Probably a half dozen times during the entire investigation.

Mr. NELSON. During what year?

Mr. LOCKER. I had a conference, I think, last year

Mr. NELSON. 1915?

Mr. LOCKER. Yes, sir.

Mr. NELSON. 1914?

Mr. LOCKER. Yes, sir; 1915 and 1914.

Mr. NELSON. You began in 1913—you talked with Mr. Marshall in 1913, some time?

Mr. LOCKER. Yes, sir.

Mr. NELSON. Then you had some conversations or furnished evidence to the committee upon it by him to investigate—Mr. Thompson and Mr. Williamson?

Mr. LOCKER. Yes, sir; that was 1914.

Mr. NELSON. You appeared before them with evidence in 1915?

Mr. LOCKER. Yes, sir.

Mr. NELSON. You understood they were representing Mr. Marshall as well as the Attorney General?

Mr. LOCKER. Yes, sir.

Mr. NELSON. You did not know Mr. Marshall because you were dealing with one of his assistants, or both of them?

Mr. LOCKER. Yes, sir.

Mr. NELSON. Mr. Locker, what is your conclusion as to there being a Tobacco Trust now or not?

Mr. LOCKER. My conclusion is this, that the monopoly is being continued through the Metropolitan Tobacco Co.

Mr. NELSON. That is acting as the directing company?

Mr. LOCKER. Not as the directing company, but simply they have to do as the disintegrated companies ask them.

Mr. NELSON. Explain that.

Mr. LOCKER. The Metropolitan Tobacco Co. itself is a monopoly of distribution and Mr. Thompson will bear me out in that. They have also been proven a combination in restraint of trade. They own the New Jersey Tobacco Co.----

Mr. NELSON. Now, you are speaking of something that occurred before or after the dissolution?

Mr. LOCKER. Afterwards. This was up to the time that the American Tobacco Co. again opened the market voluntarily; when they found the investigation was on and there was likely to be another suit. They voluntarily came out and offered every jobber the same discounts, rebates, and concessions they made to the Metropolitan Tobacco Co. for the past 15 years. They came out with the story that they felt every jobber and the consumer at large should be dealt with alike. They continued that until 1915. In January they discontinued that practice. The American Tobacco Co. and the American Tobacco Products, in the metropolitan district, represent about 60 per cent of the sales. They have practically a monopoly in the metropolitan district. When they discontinued selling again, a great many jobbers had provided extra facilities for handling the additional products which the American Tobacco Co., Lorillard, Liggett & Myers, etc., sold them and put on more salesmen and created about 98 new jobbers within about three months' time, and in January, 1915, the American Tobacco Co. discontinued that practice of selling to all jobbers. They decided to sell exclusively through the Metropolitan Tobacco Co. We were losing then our factory discounts, because we could not buy the product.

Mr. NELSON. Did you call the attention of the investigating committee to the discontinuation?

Mr. LOCKER. Yes, sir; they were thoroughly familiar. It was advertised in all the trade papers.

Mr. NELSON. Did you have any conversation with these investigators as to whether or not in their judgment relief would be afforded to the trade?

Mr. LOCKER. From time to time I did, yes, sir; and Mr. Thompson always told me—the last conversation I had with Mr. Thompson and Mr. Williamson, which was alone in their office—he told me he was through with the work and that his recommendations were in Washington, and he told me he wanted to be understood as being absolutely fair in this matter and it was up to the Attorney General to act, and he had made recommendations to the Department of Justice to the effect that the Metropolitan Tobacco Co. should be dissolved. What we are suffering from to-day is the fact we can not buy direct. That is what we are suffering from for the past 15 years.

Mr. NELSON. Give us as simply as you can a statement of the practices and conditions under which you suffered after the dis-

solution of the Tobacco Trust, as resulting from the continued co-operation of the companies, so far as you know they are continued?

Mr. LOCKER. What we are suffering from to-day is that 60 per cent of the tobacco products that we sell are the American Tobacco Co.'s manufacture, and I am losing all my factory discount on that per cent I have to buy through the Metropolitan. I can not buy direct any longer. They discontinued that in January, 1915. They opened up the markets entirely in 1914, when they saw the investigation was on, and discontinued in January, 1915, and since then the majority of the jobbers who had started in business have gone out of business, and to-day we have to sell 60 per cent of our products made by the American Tobacco Co. with a 2 per cent profit. That is all we are getting to-day. Formerly they did not give us any profit whatsoever, but to-day we buy the American Tobacco Co.'s manufactured product and we receive a 2 per cent trade discount where formerly we received when the market was open in 1914, 5 per cent on cigarettes, 8 per cent on some tobacco, and 10 per cent on others. That is our loss since the market was closed by the American Tobacco Co.

Mr. NELSON. What effect has the passage of the Clayton antitrust bill had upon the market?

Mr. LOCKER. None whatsoever that I can see.

Mr. NELSON. Has the trade taken up the matter with the attorneys?

Mr. LOCKER. Yes, sir; we have been down last year—

Mr. NELSON. What attorneys have you consulted?

Mr. LOCKER. We have Judge Hunter. He is attorney for the jobbers' association as well as the retailers.

Mr. NELSON. How long has he been in practice in New York, as far as you know, approximately?

Mr. LOCKER. I do not know approximately. I have known of him to be in practice ever since the association has been in New York, which has been six years.

Mr. NELSON. Have you consulted any other attorneys?

Mr. LOCKER. In reference to what?

Mr. NELSON. With reference to relief you might procure through actions at law.

Mr. LOCKER. I have been in touch with Guggenheim, Owen, Meyer, and Marshall.

Mr. NELSON. What do the attorneys advise you, after looking over the case—that there is or not a trust?

Mr. LOCKER. They have not gone into it that deep. They simply tell me they feel we have a good case against them as yet, although my case was settled last year. They feel this is a monopolistic—the American Tobacco Co. is not a legitimate proposition and is a combination.

Mr. NELSON. You had a case against them?

Mr. LOCKER. Yes, sir; for 11 years I fought them.

Mr. NELSON. You lost the case?

Mr. LOCKER. I went through five courts and they all decided against me. I would not say that I lost.

Mr. NELSON. They decided against you; do you not think that that would indicate that you had lost your case?

Mr. LOCKER. They settled with me.

Mr. NELSON. What was the settlement?

Mr. LOCKER. They paid back all expenses incurred for 11 years.

Mr. NELSON. Of whom do you speak when you say "they"?

Mr. LOCKER. The whole combination.

Mr. NELSON. What combination?

Mr. LOCKER. The American Tobacco Co., Liggett & Myer, Lorillard, the Reynolds Tobacco Co., the Bull Durham Tobacco Co.—I suppose they all paid their share—and the Metropolitan Tobacco Co.

Mr. NELSON. How did they come to agree—what was the conversation you had with them, and with whom?

Mr. LOCKER. Now, this dragged on for months. My attorney, Mr. Dushkind, became a nervous wreck, and he persuaded me for three months to settle the case. I had prepared for the Supreme Court, and had 1,800 pages of testimony and everything ready for the Supreme Court, and my lawyer suggested I settle the case. It went on for about three months.

Mr. NELSON. Did you go to them or they come to you?

Mr. LOCKER. My lawyer did the whole thing. I did not go to them until I finally concluded to settle the case, and then I went to their office.

Mr. NELSON. Had they made the offer to you through your lawyer?

Mr. LOCKER. They made me an offer in 1904. They offered \$20,000 as settlement and \$10,000 for the lawyer. I refused the offer and went on to fight the case. That was in the State courts. When I came to the Federal courts, before the case came to trial—that was through my attorney—they offered me \$40,000 and I refused that.

Mr. NELSON. They offered it. Who offered it—what company?

Mr. LOCKER. The tobacco companies.

Mr. NELSON. That is, they offered it as coming from all companies?

Mr. LOCKER. Yes, sir.

Mr. NELSON. But who paid the money?

Mr. LOCKER. Ex-Judge Cohen's office. He represents the Metropolitan Tobacco Co. I received my check through ex-Judge Cohen's office.

Mr. NELSON. How do you know other companies were participating in that?

Mr. LOCKER. When I concluded to settle the case I was called over to 111 Fifth Avenue—Junius Parker, Mr. Dushkind, and myself—we talked the matter over, and Mr. Parker told me how foolish I was not to accept that offer they made me, and he thought it was wise on my part to settle the case, because they felt that the case should remain just as it is now. That is the very words Mr. Parker told me. I informed Mr. Parker that I was doing this not because I felt that I was beaten but because my attorney was becoming a nervous wreck, and had his whole family after me to settle the case, and I finally concluded to settle the case, and was there to settle the case.

Mr. NELSON. This case was taken to the Supreme Court?

Mr. LOCKER. It was about to go to the Supreme Court.

Mr. NELSON. Can you give me a reference to the case appealed?

Mr. LOCKER. That was in the circuit court, and the circuit court of appeals and the lower court and went to the court of appeals, and was about to go to the Supreme Court. The papers were all drawn

up, and my attorney told me he was ready to go to the Supreme Court, and left it optional with me to settle it.

Mr. NELSON. Did the company pay you the money in order that this case should not go to the Supreme Court?

Mr. LOCKER. Yes, sir.

Mr. NELSON. They paid you \$40,000?

Mr. LOCKER. No, sir; they paid twenty thousand and some odd dollars.

Mr. NELSON. How much to the attorney?

Mr. LOCKER. I do not know what the attorney got. The attorney was supposed to get half. I say my own check was ten thousand seven hundred odd dollars.

Mr. NELSON. He was to get the other half?

Mr. LOCKER. There was three lawyers—C. C. Daniels, John Wise, and Dushkind.

Mr. NELSON. John Wise?

Mr. LOCKER. Yes, sir; brother of Henry Wise, formerly United States district attorney.

Mr. NELSON. You were also paid all expenses?

Mr. LOCKER. Yes, sir; just expenses. I had shown to the court invoices on which I would receive about \$40,000 in discounts which I had been deprived of in the past six years within the statute of limitations, and I had all the invoice in court, and I had experts—three or four experts—working night and day for a week itemizing every piece of tobacco, such as Virginia leaf, etc., so as to arrive at a definite discount on each item; and the judge thought it was a very good theory of damage, but would not allow it in the end.

Mr. NELSON. Your check came through the attorney of the Metropolitan Co.?

Mr. LOCKER. Yes, sir.

Mr. NELSON. But you conferred with the attorney for the American Tobacco Co. before settlement?

Mr. LOCKER. Yes, sir; it was settled through Junius Parker, chief lawyer for the American Tobacco Co.

Mr. NELSON. What is your conclusion as to the efficacy of the dissolution of the different parts of the old Tobacco Trust?

Mr. LOCKER. Well, my conclusion is this—

Mr. NELSON. Based upon your experience in the trade.

Mr. LOCKER. My experience is this: With the disintegrated companies doing business through the Metropolitan Tobacco Co., as long as the Metropolitan remains in business there will be no chance for the jobber. The American Tobacco Co. and all the disintegrated companies will sell direct to the United Cigar companies, giving all the insurance and rebates that the Metropolitan enjoys, and the American Tobacco Co. refuses to sell direct to the jobber.

Mr. NELSON. You represent the jobbers here?

Mr. LOCKER. I am both. I am a retailer as well as a jobber.

Mr. NELSON. How general is the complaint on the part of the independents against the so-called Tobacco Trust? Are all the independents in an associaiton?

Mr. LOCKER. There are two associations, one consisting of retailers and one consisting of jobbers.

Mr. NELSON. Do they include practically the entire field of independents?

Mr. LOCKER. They have different divisions. I belong to the New York division.

Mr. NELSON. I am speaking in reference to New York.

Mr. LOCKER. They represent only the independents.

Mr. NELSON. Is it your belief, as far as you know, that the same conditions prevail now that prevailed before the dissolution, or do you agree to the statement made by Mr. Ochs that they are worse?

Mr. LOCKER. Before the dissolution of the American Tobacco Co. there were 185 factories, I believe, and they divided it up into 14 factories, as I understand, and then, as Mr. Thompson explained, before there were four active tobacco manufacturing concerns, and I understand there was substantial competition between those factories. My way of looking at it is simply this: From the selling point of view, they are competing, because the heads of these various departments will work against one another, and I think it is their theory to create competition for their own mutual benefit.

Mr. NELSON. You say the heads will work against each other?

Mr. LOCKER. The different departments.

Mr. NELSON. Struggling to get trade?

Mr. LOCKER. A sort of competition they create to stimulate sales, getting one head working against another head, for instance, with cigarettes. They have one cigarette department working against another.

Mr. NELSON. In other words, the owners put the head of one department against the head of another to get trade?

Mr. LOCKER. Yes, sir; and I can not see any benefit after the disintegration as long as they continued to sell the Metropolitan Tobacco Co. or as long as the Metropolitan continued in business.

Mr. NELSON. The facts are there has been no improvement in the trade?

Mr. LOCKER. No, sir; with the exception since the reopening of the market, since it was discovered they were violating the decree and they reopened the market again in 1914; the jobber to-day buys Lorillard's goods direct and Liggett & Myers's goods direct, and it is quite an item at the end of the month. We get a check for a few hundred dollars which we did not get for 15 years.

Mr. NELSON. That practice was discontinued, was it not?

Mr. LOCKER. No; only the American Tobacco Co. They have the Metropolitan market. The Lorillard people and Liggett & Myers are small in comparison with the American Tobacco Co. The American Tobacco Co. has practically the New York market under control.

Mr. NELSON. Have you anything further to state as to the actual conditions that you complain of?

Mr. LOCKER. Nothing further; however, I believe there is sufficient evidence to prosecute and dissolve the Metropolitan Tobacco Co., if not criminally. I understand Mr. Thompson said before it was beyond the statute of limitations to prosecute them criminally. Mr. Thompson told me that the day the statute of limitations began to run—after the date of the last criminal act they had committed, it began to run. Taking that into consideration, the last act the

Metropolitan had committed was in 1914, so that there is three years from 1914. The statute of limitations is still running.

Mr. NELSON. You mean the injunctions of the lower courts or the statute of limitations?

Mr. LOCKER. I mean they violated the decree until 1914.

Mr. NELSON. You mean the injunctions of the court?

Mr. LOCKER. Yes, sir; and I believe that was their last illegal act. Mr. Thompson will bear me out when the investigation was on—I had within three blocks of my business a small dealer who had been there about eight years, and the name above the door had always been “Gluckman.” Now, I had an idea that he was in some way connected with the Metropolitan Tobacco Co., but there was no proof until Mr. Thompson got busy and found they were all over the district, and that they were bogus independents. If a man did not feel like buying from the trusts, they would put up an independent concern near my place, and say you can buy from him as you can from us, and naturally they would go in there and get things at rock-bottom prices. Immediately after the investigation had been completed—

Mr. NELSON. By Mr. Thompson?

Mr. LOCKER. Yes, sir; and Mr. Williamson—the name “Metropolitan Tobacco Co.” went on there—“Branch No. 2, cash depot.” They had these bogus independent concerns all over the Metropolitan district. That showed the conspiracy of the Metropolitan to drive the independents out of business. If they could not do it directly, they did it indirectly. Two months after that they took the name off and removed all stock, because they had no more use for this particular storekeeper, although he had been there eight years. When they put the name “Metropolitan” over the window my business doubled over the counter—that is, the cash business done over the counter—because after they discovered this was a branch of the Metropolitan they did not care to patronize, and my business increased.

Mr. NELSON. You mean to suggest that the public preferred to trade with an independent rather than with the Metropolitan?

Mr. LOCKER. In a great many instances; yes, sir. Of course they have the facilities for getting business. The trade they can not get they get in this way, indirectly.

Mr. NELSON. Mr. Thompson, when you say the statute of limitations do you mean these injunctions?

Mr. THOMPSON. No; I meant the three years' statute of limitations for criminal violations of the Sherman antitrust act. The violation of the injunctive provision to which Mr. Locker referred was cured by the action of the parties who had violated the decree by remedying the illegal conditions themselves. There was nothing, then, to present them for contempt for.

Mr. GARD. We will take a recess at this point until 2.30 o'clock.

(Whereupon, at 2 o'clock p. m., a recess was taken until 2.30 o'clock p. m. of the same day.)

AFTER RECESS.

The hearing was resumed at 2.45 o'clock p. m., pursuant to the taking of recess.

TESTIMONY OF MR. CLAUDE A. THOMPSON—Continued.

Mr. CARLIN. Were you, in the investigation of these trust matters, a special attorney appointed and paid by the Attorney General's office, or a subordinate of the district attorney of the southern district of New York and paid from his funds?

Mr. THOMPSON. It is a combination of both, I should say. I am designated and appointed by the Attorney General as a special assistant to the United States district attorney for the southern district of New York. I am paid by the department at Washington out of the funds appropriated by Congress for the enforcement of the anti-trust act. The ordinary assistants or regular assistants in the district attorney's office are paid in New York. I render my accounts to and am paid through the Attorney General's office.

Mr. NELSON. You were assigned, as I understand it, to the anti-trust division of the district attorney's office in New York?

Mr. THOMPSON. Yes, sir.

Mr. NELSON. Is Mr. Williamson also a special attorney with you?

Mr. THOMPSON. Mr. Williamson is a special agent of the Bureau of Investigation of the Department of Justice. He was assigned, in the usual course of business, to work under my direction, and to assist me in such work as I should deem necessary for him to do.

Mr. NELSON. I want to say for the record that having conferred with the chairman of the committee and Mr. Gard, and you having stated you regard these reports as confidential and as you are acting under the Attorney General, we have agreed that we will request the Attorney General for these reports and I will not request these questions for details from you at this time.

Mr. THOMPSON. Do you request that I should state positively what reports they are?

Mr. NELSON. Yes.

Mr. GARD. You have done that.

Mr. NELSON. Let him state those reports, so we will know what to request, specifically.

Mr. THOMPSON. There are either two or three drafts of petitions against the Metropolitan Tobacco Co. and others. There is one report submitted, I think, in September last, in reference to the United Cigar Stores, and the Riker & Hegeman Corporation and their affiliated companies. There was a further report, I think, completed and dated in March last and submitted to the Attorney General some time during the month of April, with reference to the general tobacco situation, including all of the tobacco and snuff manufacturing companies which were a part of the old so-called Tobacco Trust.

Mr. CARLIN. Just one question: I have been unable to be present at the hearing. There has been some statement made to the committee—I do not know whether it is in the record or not—that your reports and recommendations were probably changed or not approved by the district attorney, Mr. Marshall. Do you feel like telling us whether that was correct or not?

Mr. THOMPSON. I am positive that the reports were transmitted to the Attorney General in the same condition as they were transmitted by me to the district attorney. What his recommendations were to the Attorney General; that is, whether he concurred in my conclusions and recommendations, I do not know.

Mr. CARLIN. Then everything that you have heretofore found, either as a matter of fact or as a matter of law, has been regularly lodged in the office of the Attorney General of the United States?

Mr. THOMPSON. Except the minutes of the examination of various witnesses I had before me.

Mr. CARLIN. Those were your private notes?

Mr. THOMPSON. Those are notes that form a part of the files of the United States attorney's office. There are five large trunks in the district attorney's office containing the papers and information and data that I had received or collected in the course of the investigation. All that was personally submitted to the district attorney under the reports that I refer to and they were transmitted through him to the Attorney General.

Mr. CARLIN. In other words, the only evidence relating to these cases that came to your observation that were submitted to Mr. Marshall have been submitted to the Attorney General?

Mr. THOMPSON. That is correct. I am not positive that the first draft of the petition, or perhaps even the second draft of the petition in the Metropolitan, might still be in the district attorney's office in New York, because they were sent back with the suggestion that certain modifications be made.

Mr. CARLIN. Was one of these petitions or one of the complaints which you investigated under the administration of Attorney General Wickersham?

Mr. THOMPSON. No, sir; I began my investigation under, and pursuant to, personal instructions of Attorney General McReynolds.

Mr. CARLIN. Were you ever ordered to bring suit in these cases by the Attorney General?

Mr. THOMPSON. I was ordered in the Metropolitan case to prepare a draft of a petition setting forth the allegations which, in my judgment, could be substantiated by the evidence.

Mr. CARLIN. You did that?

Mr. THOMPSON. I did that.

Mr. CARLIN. And returned that to the Attorney General's office?

Mr. THOMPSON. Yes, sir.

Mr. CARLIN. You were never directed to bring suit?

Mr. THOMPSON. I was never directed to file any petition. In fact, no petition was ever approved by the Attorney General, so far as I know.

Mr. NELSON. Who was the lawyer that represented the parties who organized the drug and tobacco combine?

Mr. THOMPSON. There has been no drug and tobacco combine that has gone through. Mr. Whalen, who was president of the United Cigar Stores Co., organized the syndicate which acquired the majority interest of the stock of the Riker & Hegeman Co. They then proceeded to a consolidation of the United Cigar Stores Co. interests and the Riker & Hegeman Co. That was later abandoned, and I understand that the Riker & Hegeman chain of drug stores have been taken over and united with the United Drug Co. That matter was handled, so far as the Department of Justice was concerned, by the United States district attorney in Boston.

Mr. NELSON. Do you know who represented the combination?

Mr. THOMPSON. No, sir. I know that so far as the United Cigar Stores were concerned Mr. Stroock represented them, and Mr. Levy,

to whom I have formerly referred, represented, and I think still represents, the Riger & Hegeman Co.

Mr. NELSON. Of what firm is he a member?

Mr. THOMPSON. A member of the firm of O'Gorman, Battle & Vandiver. He was formerly an assistant district attorney under Mr. Wise.

Mr. NELSON. Have you been informed as to what fee was received by this firm for acting in this matter?

Mr. THOMPSON. No; I have not. I understand, however, that Mr. Levy personally is under an annual retainer.

Mr. NELSON. By the firm?

Mr. THOMPSON. By the Riker-Hegeman Co. That is only hearsay.

Mr. CARLIN. That matter was handled through the Boston office?

Mr. THOMPSON. So far as the Department of Justice was concerned. There was some complaint there or the Department of Justice was asked to enjoin the proposed merger, and the United States attorney at Boston came down to see me to ascertain some of the facts which I had collected with reference to the Riker-Hegeman Co., but as to the subsequent merger and what took place and the manner in which it was carried out I have no information whatever.

Mr. NELSON. Have you any knowledge of any fees received by this firm of O'Gorman, Battle & Vandiver; is that the name of it?

Mr. THOMPSON. Yes.

Mr. NELSON. In the settlement of trust prosecutions in this district of New York?

Mr. THOMPSON. None whatever.

Mr. NELSON. Have you observed that the litigation in cases relating to trusts has increased or decreased on the part of the firm of O'Gorman, Battle & Vandiver since Mr. Marshall's occupancy of the office of district attorney?

Mr. THOMPSON. I have no knowledge of what their practice was before Mr. Marshall became district attorney in that particular line.

Mr. NELSON. Are they very active now?

Mr. THOMPSON. So far as I know the firm has appeared in only one trust investigation other than the Riker-Hegeman investigation.

Mr. NELSON. What investigation was that?

Mr. THOMPSON. That was the so-called Vaudeville Trust.

Mr. CARLIN. As a matter of fact, Mr. Thompson, the district attorney's office has nothing to do with initiating suits against the trusts; as I understand it those matters are handled almost exclusively by the Attorney General's office. Is not that true?

Mr. THOMPSON. The final approval and the final say, and the voice of the department is the voice of the Attorney General himself, so far as any proceedings under the Sherman law are concerned.

Mr. CARLIN. Assuming, Mr. Thompson, that practically all of the trusts of the country—if there are any—have their headquarters at New York, that being the financial center, the district attorney would not move in the matter at all, even if he were convinced of violations of the antitrust laws, unless directed so to do from Washington. Is that the idea?

Mr. THOMPSON. I do not know that I would draw a line of demarcation quite as strictly as that, because it is common practice in the office for those of us who are assigned to the antitrust division to entertain complaints of any citizen as against any company. We

then transmit to or inform the Attorney General's department that a complaint has been filed. We, of our own initiative, then either refer specific questions, under that complaint, to the Bureau of Investigation, or we ourselves direct personal investigation and thereafter report the facts found to the Attorney General, together with our recommendations, but we do it through the district attorney to whose office we are assigned.

Mr. CARLIN. So the disposition of the matter or the question of whether a suit should be brought, after a complaint has been made, is in the hands of the Attorney General?

Mr. THOMPSON. I have never known of one having gone forward, under any administration, under any other circumstances.

Mr. CARLIN. In the case of the indictments pending there now against Buchanan and others, the same rule, of course, I suppose, was followed?

Mr. THOMPSON. I have no personal knowledge of the Buchanan case. I had nothing to do with the investigation of it and have no knowledge whatever as to anything that was done with respect thereto.

Mr. CARLIN. In the case of a violation of a decree in any one of the large injunction suits, in the dissolution of a combination such as the Standard Oil or the American Tobacco, and other cases of that kind, if there were a complaint made that the injunction was being violated, do I understand you to say that it would be the custom to refer that complaint, in the regular way, to the Attorney General's office?

Mr. THOMPSON. To advise the Attorney General that a complaint had been filed, but our office in New York would proceed with its investigation to determine whether or not the complaint was based upon facts which could be substantiated. If substantiated, the report of those facts, together with the recommendations of the district attorney, would be sent to the Attorney General.

Mr. CARLIN. You would not have the power, or if you did have it you would not exercise the power to bring a dissolution suit or to bring any kind of a suit against parties charged with violation of an injunction without first referring the matter in the regular way to the Attorney General's office?

Mr. THOMPSON. In a new proceeding the statute requires it to be done under the direction of the Attorney General, and it is customary for the Attorney General, as well as the district attorney and the special assistant handling it, to sign the bill in question.

Mr. CARLIN. You would not call a suit for violating an injunction a new proceeding, would you?

Mr. THOMPSON. No; if such a matter had come to my attention, I would have investigated it in the usual way and sent in a report, together with my recommendations, through the district attorney. Section 4 of the act specifically requires that the initial proceeding be instituted under the direction of the Attorney General.

Mr. CARLIN. Of course, that would mean that it could not be done without his direction. Does that apply to criminal as well as to civil suits? You have the act before you there.

Mr. THOMPSON. My recollection is that it applies only to equity proceedings, but I will see. That applies to proceedings in equity.

Mr. CARLIN. It applies to such a case as the Metropolitan Tobacco case and the Riker-Hegeman case, about which you have been testifying?

Mr. THOMPSON. Yes. I have also testified with respect to a criminal violation of the law; that, in my judgment, the acts that would show a violation of the criminal provisions of the statute, were barred by the three-year statute of limitations; that is, I mean the facts surrounding the organization of the Metropolitan Tobacco Co., the connection of it with the American Tobacco Co., and the American Tobacco Co.'s part in procuring its organization.

Mr. CARLIN. So it would have been impossible to have brought any criminal proceeding?

Mr. THOMPSON. That was my judgment.

Mr. CARLIN. And if any civil proceedings were to be brought, they had to be directed by the Attorney General's office?

Mr. THOMPSON. That is as I have always understood the law.

Mr. CARLIN. Just for the information of the committee, Mr. Thompson, as to the general practice in criminal proceedings under the antitrust laws, ordinarily where there was a criminal violation of the law, there would likewise be a civil remedy?

Mr. THOMPSON. Yes.

Mr. CARLIN. And as a consequence, both might be involved and both are really involved, because the injunction has a civil remedy, and the indictment a criminal remedy; now, would the determination as to which proceeding should be instituted be left to the Attorney General's office?

Mr. THOMPSON. So far as I know, the district attorney, or the special assistant investigating, makes his recommendations, sometimes with respect to both criminal and civil remedy, and sometimes only as to the one, and I think that the matter is always submitted to the Attorney General.

Mr. CARLIN. Now, just to illustrate—you seem to be an expert in these matters—let us consider the Buchanan case for just a moment. In that case there happens to have been a criminal indictment found. That does not mean that an injunction suit might not have been brought as well, do you think, or that both could not have been brought?

Mr. THOMPSON. Providing the parties were continuing the alleged violation of the law. If, however, there had been a violation of law, which had ceased, there being no combination to dissolve, there being no one engaged in restraining interstate trade, there would be no jurisdiction in a civil remedy. Your only remedy would be under the criminal provisions of the statute for past acts.

Mr. CARLIN. If an organization such as I believe Labor's Peace Council is said to have been had been guilty of violating the Sherman law, and the organization was still in existence, would not an injunction lie to prevent a continuance of those practices?

Mr. THOMPSON. Assuming that the activities would be in relation to interstate commerce, and would come within the provisions of the act.

Mr. CARLIN. Of course, if they did not come within the provisions of the act, there would not be any criminal or civil remedy either?

Mr. THOMPSON. No; but if they were continuing the restraint, or monopoly, or whatever may have been the charge of violating the Sherman law, a civil remedy would lie.

Mr. CARLIN. Therefore, by reason of that fact, that a civil remedy would lie, would it not then be true that the disposition of the matter, under the statute, would have to go to the Attorney General's office?

Mr. THOMPSON. Well, I can not state what was done. I should say, in the ordinary course of practice, it would go to the Attorney General's office. What was done I do not know.

Mr. CARLIN. I am not asking you what was done; I am asking you about, in the ordinary course and routine of the office, whether or not a matter of that sort would necessarily go to the Attorney General's office?

Mr. THOMPSON. As I understand the routine of the office, yes. I may say that the final results obtained in dissolution proceedings, when referred to the lower courts, after a victory by the Government in the Supreme Court, have not been such as to give a great deal of encouragement to those engaged in enforcing the civil provisions of the act. On the other hand, the results of the jury trials in an endeavor to vindicate the criminal provisions of the act have not met with much success. I can conceive of cases where you would resort to the criminal provisions of the act, without civil, and vice versa, because in every case you have got to consider whether the acts are vicious enough that a jury would probably convict, and probably most of the violations of the antitrust act that have come to my knowledge have been where the parties charged with the violation have been following a course concerning which counsel advised them, and which they have believed was right. Obviously, in such a case, there being no criminal intent, civil proceedings would be the proper remedy.

Mr. CARLIN. Do you know of any acts of Mr. Marshall's which would lead you to conclude that he had used his office in any way to prevent either a civil or a criminal suit against any of these tobacco companies or other parties named here to-day?

Mr. THOMPSON. No; on the contrary, so far as the tobacco investigation is concerned, he has given me almost unlimited power of investigation. That is, that I was allowed to pursue it to any limit that I thought proper.

Mr. NELSON. As a matter of information, with reference to the operation of our trust laws, perhaps a little aside, yet somewhat related to the matter under investigation, I want to ask you this question: You have studied the decisions of the Supreme Court in reference to the Tobacco Trust?

Mr. THOMPSON. Yes.

Mr. NELSON. And you have also studied the decree of the lower court?

Mr. THOMPSON. I have.

Mr. NELSON. Has the decree of the lower court made it more difficult or more easy, assuming that there is a continuance of the trust practices, to prosecute a trust such as the Tobacco Trust?

Mr. THOMPSON. Well, I hardly grasp the scope of your question.

Mr. NELSON. The point is this: Is it true, as has been suggested, that the decree has made it practically impossible to secure conviction; that it has legalized certain practices?

Mr. THOMPSON. I would not say that it had legalized certain practices, but I would say that the division of the tobacco business of the country among and between the four companies, as was done by the decree, was ineffectual to remedy the wrongs which the Government complained of and which were condemned by the Supreme Court.

Mr. NELSON. That answers the question to my satisfaction.

Mr. CARLIN. Mr. Thompson, we are very much obliged to you, sir.

Mr. THOMPSON. Thank you.

Mr. CARLIN. Is Mr. Wolff present in the court?

TESTIMONY OF MR. BARNET WOLFF.

(The witness was duly sworn by Mr. Russell, the clerk of the subcommittee.)

Mr. CARLIN. What is your business, please, Mr. Wolff?

Mr. WOLFF. I am sales manager for an independent tobacco firm.

Mr. CARLIN. What firm?

Mr. WOLFF. S. Monday & Sons.

Mr. CARLIN. Have you ever made any complaint against the operation of any of these units of the former Tobacco Trust?

Mr. WOLFF. I have, by virtue of being president of the Independent Tobacco Jobbers' Association.

Mr. CARLIN. With whom did you come in contact in making such complaint?

Mr. WOLFF. Mr. Thompson, and by correspondence and personally with the Attorney General.

Mr. CARLIN. Mr. Thompson advised you, I suppose, that these matters went to the Attorney General's office?

Mr. WOLFF. Mr. Thompson—if you will permit me, I want to state it in a general way; how the matter began and how we happened to go to Mr. Thompson's office.

Mr. CARLIN. I think we know that already. I am asking what happened after you got to Mr. Thompson's office. I do not care what took you there.

Mr. WOLFF. Mr. Thompson listened to our complaint and said that the matter would be investigated. The complaint was drawn up for us by our attorney, Mr. Hunter, who has been mentioned previously to-day here, and copies of the complaint were also sent to the Attorney General's office at Washington.

Mr. CARLIN. Then, after nothing happened, did you go back to Mr. Thompson?

Mr. WOLFF. We got in touch with Mr. Thompson several times, and Mr. Thompson usually told us that the matter was under investigation.

Mr. CARLIN. What happened after he had concluded the investigation? Did you go to see him then?

Mr. WOLFF. In the meanwhile, we had not been getting any satisfaction, so we called on the Attorney General about a year ago at Washington, and we laid—

Mr. CARLIN (interposing). We have those facts before us. I am trying to find out from you now what happened between you and Mr. Thompson when he advised you that the investigation was concluded?

Mr. WOLFF. Mr. Thompson told us that he had completed the investigation and had made certain recommendations to the department. In his opinion he stated that he thought that the Metropolitan Tobacco Co. was acting in violation of the law, and ought to be dissolved.

Mr. CARLIN. Then you went to the Attorney General's office?

Mr. WOLFF. I went to the Attorney General's office.

Mr. CARLIN. Have you had any connection with Mr. Marshall in this matter at all?

Mr. WOLFF. None.

Mr. CARLIN. You never had any conversation with him on the subject?

Mr. WOLFF. Never.

Mr. CARLIN. So far as you know, in your relations to it, he had no connection with the matter?

Mr. WOLFF. Only by hearsay. Mr. Thompson once told me—I do not know if he will recall it—that he was conducting the investigation, but nothing could be done until Mr. Marshall would come back to the city. He was absent at that time from New York.

Mr. NELSON. What is your opportunity to ascertain the conditions of the tobacco trade now, as compared with what it was before the dissolution?

Mr. WOLFF. I believe I have very good opportunities. S. Monday & Sons being the largest independent jobber in Greater New York, we do business in every part of the metropolitan district, and I have a large force of men under me and come in direct contact with the retail trade quite often.

Mr. NELSON. What are the conditions as to oppressive practices that you have observed suffered by the independents?

Mr. WOLFF. Jobbers or retailers?

Mr. NELSON. Either; take the jobbers first.

Mr. WOLFF. We will speak of the jobbers first.

Mr. CARLIN. Also the consumer; put him in, too.

Mr. WOLFF. Well, if you wish me to, I shall give you my impressions, but I will begin at one end. When the so-called trust companies opened up the market in April, 1914, the immediate effect on the jobbing business—the tobacco jobbing business was very good indeed. All of the companies began to sell the independent jobbers directly, permitting them jobbers' discounts, giving them an opportunity to put their business on a profitable basis thereby, and also giving them an opportunity to develop their business. Almost all of them took advantage of that condition; they increased their plants; hired additional men; some of them went to considerable expense in putting up additions to their different buildings, buying wagons, horses, automobiles, and generally getting ready to do business in an open market. A good many of them were favored by the independent retail trade in the city of New York, and their business grew very rapidly. In January, 1915, the American Tobacco Co. sent a circular letter to all of the independent jobbers, telling them that they would no longer continue to sell them direct; that if they wanted American Tobacco Co. products they would have to buy from the Metropolitan Tobacco Co. It so happens that the products of the American Tobacco Co. represent 60 per cent and possibly more of the tobacco products sold in the metropolitan district. It

immediately put every independent jobber under a tremendous handicap. A good many of them lost a good deal of money, because of the additional facilities which they had put on, and which they now could not use. The other companies have continued to sell the independent jobbers directly, and it is about the only thing that keeps them alive to-day. If either one of the other large companies, or all of them, were to follow the practice of the American Tobacco Co. and discontinue to sell them direct, 99 per cent of them would have to go out of business at once. They could not stand it at all. The opening up of the market, in my opinion, therefore, was the lifesaver of the situation in the metropolitan district. The shutting off of the market by the American Tobacco Co. strangled the independent jobbers to the extent of 60 per cent.

Mr. NELSON. This occurred before the dissolution?

Mr. WOLFF. No; the dissolution occurred several years ago. Then the decree was handed down. Then, as I understand it, they found that they were not living up to the decree, and threats—well, I probably should not call them “threats,” but representations by the Department of Justice were made to the various companies, that they would be prosecuted unless they lived up to the decree.

Mr. NELSON. They were aware of this investigation, were they not, by Mr. Thompson and Mr. Williamson?

Mr. WOLFF. No; this was prior, I believe, to Mr. Thompson's and Mr. Williamson's activities in the matter, and it had gone on for quite a while. I could not give you the exact date, but the large companies were continually told that unless they would do something to live up in letter and in spirit to the decree, that they would be prosecuted, so one nice morning they published an advertisement in the daily prints that they would sell to all jobbers, and they began to sell to all jobbers. They continued to sell to all jobbers for about nine months, when the American Tobacco Co. suddenly, without warning, shut off the direct dealing with the independent jobber and crippled the independent jobber to the extent of 60 per cent. It was the result of that action which caused the independent jobbers to organize and to file a complaint with the Department of Justice, both at New York in the district attorney's office and at Washington in the office of the Attorney General, and we have not been able to get any relief.

Mr. NELSON. Now, with reference to the retailers—

Mr. WOLFF (interposing). I will state further, if you will permit me—

Mr. NELSON (interposing). Yes; go on.

Mr. WOLFF (continuing). That there is a fear on the part of all of the independent jobbers to-day that any day the other companies will do likewise, if they find, in the language of the street, that the American Tobacco Co. can “get away with it,” and they are afraid to call their souls their own.

Mr. NELSON. You mean they are afraid they will refuse to sell them direct?

Mr. WOLFF. There is a fear that the other companies might, if the American Tobacco Co. will “get away” with this proposition of stopping the selling direct to all jobbers on an equal basis—there is a fear that the other companies will do the same. All of us—the

larger jobbers and the smaller jobbers—are constantly afraid to call our souls our own, for fear of what might come to-morrow.

Mr. CARLIN. You think that the Attorney General's office is the place to have your fears allayed?

Mr. WOLFF. We felt that way, yes, as citizens of the United States and as taxpayers and as people who had been suffering a great many wrongs for many years.

Mr. CARLIN. Do you know of any statute that provides a cure for fear?

Mr. WOLFF. No; I do not mean that the fear was to be allayed by the Attorney General's office, but the grievances of the American Tobacco Co. shutting off the sales direct to the independent jobbers.

Mr. CARLIN. There are four other companies from which you independents buy? You buy from the United Cigar Stores, Liggett & Myers, and Lorillard?

Mr. WOLFF. We buy from Lorillard, Liggett & Myers, Reynolds, and the snuff companies.

Mr. CARLIN. You were afraid that they would shut you off some day?

Mr. WOLFF. We are now shut off from 60 per cent.

Mr. CARLIN. By the American Tobacco Co.?

Mr. WOLFF. Yes.

Mr. CARLIN. But you are not shut off from the other units of the American Tobacco Co. which was dissolved?

Mr. WOLFF. We are not, but we fear that we may be.

Mr. CARLIN. You fear that you may be?

Mr. WOLFF. Yes; if they get away with it.

Mr. NELSON. You have a fixed and definite percentage of profit?

Mr. WOLFF. Who?

Mr. NELSON. From the other companies?

Mr. WOLFF. The others all give the jobbers some profit—some 5 per cent and some 10 per cent, and so on, but the American Tobacco products can only be secured from the Metropolitan Tobacco Co. at a profit of 2 per cent.

Mr. CARLIN. Are you one of the committee of 14 that went to see the Attorney General?

Mr. WOLFF. Yes, sir.

Mr. CARLIN. Whom did you see when you got there?

Mr. WOLFF. We saw Attorney General Gregory, and Mr. Todd was in the office at the time.

Mr. CARLIN. And you laid your case fully before them, did you?

Mr. WOLFF. Yes; fully.

Mr. CARLIN. And what did they tell you?

Mr. WOLFF. Mr. Gregory said he would like to have a statement of the facts. He wanted particulars. Mr. Todd said he wanted further legal grounds.

Mr. CARLIN. In fact, he told you that you did not have any case; is not that the fact?

Mr. WOLFF. Mr. Todd said that he thought we ought to have further legal grounds. The Attorney General said he would like to have a statement of facts. We went back to New York and we gathered a statement of facts, verified and sworn to by various jobbers and others, and this statement of facts was laid before the At-

torney General's office, as well as the office of Mr. Thompson, or Mr. Marshall in New York.

Mr. CARLIN. When was that?

Mr. WOLFF. This was six or seven weeks after we had been to Washington, which was about a year ago to-day. I could not give you the exact date.

Mr. CARLIN. Have you not been back to Washington since?

Mr. WOLFF. No, sir; but I have corresponded with the Attorney General's office on several occasions, by direction of the Jobbers' Association.

Mr. CARLIN. What was the result of that correspondence? Did they not tell you that you did not have sufficient evidence to justify a suit?

Mr. WOLFF. No; their answers were always signed by Mr. Todd, as assistant to the Attorney General, and the substance of them was that the matter was under consideration; that no final decision had been arrived at.

Mr. CARLIN. You know nothing about Mr. Marshall's connection with this matter at all?

Mr. WOLFF. Nothing further than I have stated.

Mr. NELSON. Will you state what grievances the retailers have?

Mr. WOLFF. So far as the retailers are concerned, the opening of the market in April, 1914, created a situation where the retailers had a chance to draw their breath for the first time in many years. They began to do business with different jobbers—with whomsoever it suited them best—and they got better credit facilities and they got better service, and in a number of cases they got better prices from the jobbers than they had been getting from the Metropolitan Tobacco Co.

Mr. NELSON. What was the occasion for that change?

Mr. WOLFF. The open market. The jobbers were able to go to them and sell to them.

Mr. NELSON. What caused the open market in that case?

Mr. WOLFF. The open market was caused, I understand—this is hearsay—by the fact that the Attorney General's office had threatened the companies with prosecution if they would not do something to live up to the decree of the United States Supreme Court and the circuit court which had handed down the decree.

Mr. NELSON. That was the understanding in the trade?

Mr. WOLFF. That was the understanding in the trade.

Mr. NELSON. Go on.

Mr. WOLFF. Things were going along very nicely, and the retailers were pretty well satisfied, with the exception of the unfair competition which they were getting from two or three chain-store systems, which are very active in the metropolitan district, when the American Tobacco Co. in January, 1915, shut off the market. Then the Metropolitan Tobacco Co., in a large number of cases that I personally know of, came to a great many retailers and told them, "Now, we have you; you have got to buy American Tobacco Co. products from us." They curtailed their credit, and in many other ways hurt them. Statements of this condition were obtained, I understand, by Mr. Thompson, and verified, from retailers who called at his office and submitted testimony. It seems that imme-

diately after this act of the American Tobacco Co. in shutting off the market a very active campaign against the retail storekeepers was begun by the chain stores and store systems. They could not have done it without the assistance of the large companies, since no store system can conduct business at a loss, and they had different schemes, which showed that they lost on the products unless they were reimbursed by somebody. This is a conclusion based merely on business practice and business knowledge. The United Cigar Stores, the Schulte chain, and later on the Riker-Hegeman chain, began unfair competition by giving away an unusually large number of certificates on various articles, and by having different sales at which they sold goods at less than the ordinary retailer could buy these products, and in other ways seemed to be conducting their business in such a way as to gradually crowd out and freeze out the small independent retail storekeeper. Recently a report has been issued by the United Cigar Stores Co. that they are going to open up a large number of stores, which they had not done for a long time previously. Only a few days ago they issued a report that they are again going to open up a large number of stores, which, of course, will further restrict the possibilities of the independent retailer to carry on his business. So far as the consumer is concerned, up to the present time, the whole thing has been beneficial to the consumer. He has been getting something for less money; he has been able to go to a store that had a 1-penny sale—that is, 10 cents for one package of cigarettes and 11 cents for two packages, and the consumer has benefited temporarily. Whether or not he will benefit ultimately I can not say. I doubt it, if general trust practices are to be followed out.

Mr. NELSON. It is, of course, interesting to know what conditions are prevailing in the country, but it is also true that unless you can show that Mr. Marshall has something to do with this it is not entirely germane.

Mr. WOLFF. I appreciate that fully. I can not say more than I know.

Mr. CARLIN. You are excused, Mr. Wolff.

Is Mr. Locker here?

FURTHER TESTIMONY OF MR. JOHN A. LOCKER.

Mr. CARLIN. Mr. Locker, will you look at the letter I hand you and advise me whether or not you wrote that letter to me?

Mr. LOCKER. Yes.

Mr. CARLIN. You failed to sign it.

Mr. LOCKER. I do not see how I did that. I guess the girl in the office sent it out without my signature. I will sign it now.

Mr. GARD. We assumed that you signed it anyhow.

Mr. CARLIN. Yes; we assumed that.

Mr. LOCKER. Yes.

Mr. CARLIN. The committee will now stand adjourned.

(Thereupon, at 3.35 o'clock p. m., the subcommittee adjourned subject to the call of the Chair.)

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